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**THE LAW AND POLICY OF FINANCIAL REGULATION AND  
DEREGULATION OF NIGERIAN BANKING SYSTEM**

**BY**

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Thesis submitted in fulfilment of the requirements for the award  
of the degree of Doctor of Philosophy in Law

**SCHOOL OF LAW  
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**TABLE OF CONTENTS**

<b>SUBJECT</b>	<b>PAGE</b>
Dedication.....	VIII
Abbreviation.....	IX
Nigerian Legislation.....	X-XI
Nigerian Monetary and Banking Guidelines and Directives.....	XI-XII
Official Documents of CBN and NDIC.....	XII-XIII
Nigerian Government Publications.....	XIII-XIV
Table of Cases.....	XIV
Foreign Legislation.....	XIV-XV
International Treaties.....	XV
Official Documents of IMF and World Bank.....	XVI
Nigerian and Foreign Newspapers and Magazines.....	XVI-XVII
Acknowledgement.....	XVIII
Declaration.....	XIX
Abstract.....	XX

<b>PART ONE.....</b>	<b>1</b>
<b>Chapter One : INTRODUCTION AND RESEARCH METHODOLOGY...2-17</b>	
1.1 Objectives.....	2
1.2 Methodological Approach.....	3
1.3 Remarks on Relevant Literature and Sources.....	8
1.4 Basic Sources.....	11
1.4.1 Primary sources.....	11
1.4.2 Secondary sources.....	12
1.4.3 Interviews.....	12
1.5 Organisation of the Thesis.....	15





**PART TWO.....18**

**Chapter Two : FINANCIAL REGULATION AND DEREGULATION OF THE  
BANKING SYSTEM : NATURE AND THEORY.....19-53**

2.1	Introduction.....	19
2.2	The Concept of Financial Regulation.....	20
2.3	The Objectives of Financial Regulation.....	22
2.4	Types of Financial Regulation of the Banking System.....	25
2.5	Central Banks and Financial Regulation of the Banking System.....	26
2.6	Politics, Law and Financial regulation.....	30
2.7	Financial Regulation and Regulatory Interventionism : The Theoretical Underpinnings.....	32
2.7:1	Classical Theories of Regulatory Interventionism.....	34
2.8	From Financial regulation to Financial Repression : An Analysis of the Developmental Theory of Regulatory Repressionism.....	36
2.9	The Concept of Financial Liberalisation and Deregulation.....	44
2.10	Conclusions.....	52

**Map of Nigeria.....54**

**Chapter Three : POLITICAL, LEGAL AND ECONOMIC  
BACKGROUND.....55-73**

3.1	Introduction.....	55
3.2	Colonial Era.....	55
3.3	The Post Colonial Era.....	57
3.3:1	Corruption and Instability Between 1960 and1966.....	58
3.3:2	War and Oil boom (1967 - 1975).....	60
3.3:3	Quest for sanity and civility (1975 - 1979).....	61
3.3:4	Bungled democracy and Military Paternalism (1979 - 85).....	62
3.3:5	The regimes of Predatory dictatorship (1985 - 1998).....	64
3.4	Nigerian Economy.....	66
3.5	The Legislative and Governance Structure of Nigeria.....	68
3.6	State, Elite and Economy.....	70
3.7	Conclusions.....	73

**PART THREE.....74**

**Chapter Four : THE EVOLUTION AND STRUCTURE OF NIGERIAN  
BANKING SECTOR IN PRE-LIBERALISATION ERA**

**(1892 - 1985).....75-97**

4.1	Introduction.....	75
4.2	Evolution of the Banking Sector.....	75
4.2:1	Standardisation of Currency.....	76
4.3	Era of Laissez-Faire : The Growth of the Banking Sector (1892 -1952 )..	78
4.3:1	Indigenous Banks.....	80
4.4	Era of Minimalist Regulation (1952 -1958 ).....	81
4.5	Era of Liberal Regulation (1958 - 1968 ).....	84
4.6	From Laissez-Faire to Banking Interventionism in Nigeria : The Post Independence Experience.....	87
4.6:1	Nigerian Political System and Financial Regulation.....	89
4.6:2	Banking Interventionism in Nigeria: General Underlying Factors.....	94
4.7	Conclusions.....	97

**Chapter Five : NIGERIAN BANKING REGULATORY NORMS AND  
THEIR EFFECTS (1960-1985): A REFLECTION ON THE  
PRE-LIBERALISATION ERA.....98-125**

5.1	Introduction.....	98
5.2	The Regulatory Structure of the Nigerian Banking System.....	99
5.3	Interest Rate Regulation.....	102
5.4	Credit Regulation.....	106
5.5	Indigenisation Decree and Government ownership.....	111
5.6	Exchange Control Measures.....	115
5.7	Financial Repression through Government Borrowings.....	118
5.8	Efficacy of Regulatory Interventionism and Repressionism in Nigeria : A Critique.....	121
5.9	Conclusions.....	125

<b>PART FOUR.....</b>	<b>126</b>
<b>Chapter Six : IMF AND WORLD BANK IN NIGERIA: AN ECONOMY IN FULL RETREAT.....</b>	<b>127-141</b>
6.1 Introduction.....	127
6.2 IMF, World Bank and Nigeria : The Movement Towards Banking Deregulation.....	127
6.3 Conclusions.....	141
<b>Chapter Seven : BANKING DEREGULATION IN NIGERIA : THE LEGAL FRAMEWORK.....</b>	<b>142-178</b>
7.1 Introduction.....	142
7.2 Letting Capital Loose : The Regulatory and Institutional Fabric of Banking Deregulation in Nigeria.....	143
7.2:1 Banking Laws and Policy Directives (1985-1993).....	143
7.2:2 Changes in Banking Laws and Policy Directives (1994 -1997)..	149
7.2.2:1 Banking Regulation and Policies (1994-1997).....	149
7.3 Nigerian Banking Laws under Financial Deregulation : An Appraisal.....	152
7.3:1 Lack of co-ordination of regulatory and supervisory activities....	152
7.3:2 Absence of clear procedure for the treatment of Failed Banks....	155
7.3:3 Lack of adequate safeguards for dealings between Banks and their Subsidiaries and Conglomerates.....	159
7.3:4 Absence of provisions on managerial and financial competence....	161
7.3:5 Inefficient restrictions of banking activities.....	163
7.3:6 Defective provision on Foreign Banks' operations in Nigeria.....	166
7.3:7 Absence of Judicial Review.....	167
7.3:8 Relegation of competence in financial regulation.....	168
7.3:9 Absence of rules promoting systemic efficiency.....	170
7.3:10 Absence of information disclosure rules.....	172
7.3:11 Lack of Judicial Protection against Extortionate Credit Charge....	173
7.4 Perversion of purposeful Bank Related Legislation.....	175
7.5 Conclusions.....	178



<b>Chapter Eight : THE CONSEQUENCES OF DEREGULATION AND LIBERALISATION OF THE NIGERIAN BANKING SECTOR.....</b>	<b>179-204</b>
8.1 Introduction.....	179
8.2 Growth of financial sector : Banks and Other Financial Institutions.....	179
8.3 Privatisation of Federal Government Owned Banks.....	185
8.4 Foreign Exchange Speculation.....	189
8.5 Interest Rate Escalation.....	195
8.6 Conclusions.....	203
<b>Chapter Nine : BANK FAILURE IN NIGERIA : FROM DEREGULATION TO REGULATED RECEIVERSHIP.....</b>	<b>205-227</b>
9.1 Introduction.....	205
9.2 The Deluge of Failed Banks and Financial Institutions.....	205
9.3 Bank Failure : Some Rationalisation.....	207
9.4 Regulatory and Judicial Responses to Bank Failure.....	218
9.5 Conclusions.....	227
<b>PART FIVE.....</b>	<b>228</b>
<b>Chapter Ten : DEREGULATION OF THE NIGERIAN BANKING SYSTEM : A CRITICAL PERSPECTIVE.....</b>	<b>229-273</b>
10.1 Introduction.....	229
10.2 Nigerian political dialectics and financial deregulation : A configuration of incompatible.....	230
10.3 Regulatory Agencies' Powerlessness : The Legal and Political Subversion of the CBN and NDIC.....	239
10.4 Regulatory distortions and Policy inconsistencies : Deregulation Asunder.....	249
10.5 Legal Recipe for Macroeconomic Instability : The Bane of Deregulation.....	256
10.6 IMF, World Bank and Nigeria : Reforming a Borrowing State.....	261
10.7 Conclusions.....	272

<b>PART SIX.....</b>	<b>274</b>
<b>Chapter Eleven : CONCLUSION .....</b>	<b>275-307</b>
11.1 Introduction.....	275
11.2 Remarks.....	275
11.3 Findings.....	276
11.4 Review of Hypotheses.....	278
11.5 Proposals for reform.....	281
11.5.1 Background to reform proposals:	
Comparing the Old Order with the New Order.....	281
11.6 Regulatory, Institutional and Political Reforms.....	283
11.6.1 Delimitation of Central Bank Credit to Nigerian Government.....	283
11.6.2 Independence and empowerment of the Central Bank of Nigeria.....	285
11.6.3 Deregulation of the CBN and NDIC	
from Political Interventions and Control.....	288
11.6.4 New Political Structure: A Necessity.....	290
11.7 Reforms of the Banking and Related Legislation: A Summary.....	293
11.8 Curbing Human Factors: Some Suggestions.....	295
11.9 Implementation of Reform Proposals: A Comment.....	300
11.10 The Theory of Financial Liberalisation:	
Some Lessons from Nigerian Experience.....	305
BIBLIOGRAPHY.....	308-340
APPENDICES.....	341-355

**DEO OPTIMO MAXIMO**

*TO GOD, THE BEST, THE GREATEST*

## **ABBREVIATION**

ABC	AFRICAN BANKING CORPORATION
ACB	AFRICAN CONTINENTAL BANK
AFRC	ARMED FORCES RULING COUNCIL
BBWA	BANK OF BRITISH WEST AFRICA
BOFID	BANKS AND OTHER FINANCIAL INSTITUTIONS DECREE
CBN	CENTRAL BANK OF NIGERIA
FBI	FAILED BANK INQUIRY
HIPC	HEAVILY INDEBTED POOR COUNTRIES
IBRD	INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT
IMF	INTERNATIONAL MONETARY FUND
OMO	OPEN MARKET OPERATIONS
NBN	NATIONAL BANK OF NIGERIA
NDIC	NIGERIA DEPOSIT INSURANCE CORPORATION
NDLEA	NIGERIA DRUG LAW ENFORCEMENT AGENCY
PRC	PROVISIONAL RULING COUNCIL
SAP	STRUCTURAL ADJUSTMENT PROGRAMME



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**Declaration**

The material contained in this thesis is the work solely of the author. None of the material has been submitted previously for a degree in this or any other University.

## ABSTRACT

This thesis is a study of banking regulation in Nigeria. It has three main objectives : to explain the evolution and impact of banking regulation after independence; to discuss the reasons for the persistent failure of financial regulation; and to highlight the role of external agencies in Nigeria's financial system.

The thesis offers a historical perspective on the developments in Nigerian banking regulation, but focuses mainly on the period after independence. It examines the economic and political theories that have influenced financial regulatory trends in Nigeria. It considers these theories in their political and legal context. The thesis does not embrace any theory in particular. Instead, its approach is pragmatic and comparative focusing on the interaction between legal, political and institutional factors that have influenced financial regulation in Nigeria.

The study shows that the pre-liberalisation regulatory norms were repressive and inefficient. It argues that banking deregulation was introduced as an economic revolution devoid of necessary corresponding political and legal changes. The core destabilising factors are identified as inadequate regulatory powers, political corruption, political instability, legal instability, policy distortions, and incongruous laws. The complicity of the IMF and World Bank in this process is also discussed. Financial deregulation was prompted by predatory politics characteristic of the Nigerian state; yet, deregulation has aggravated the country's political instability and exacerbated prebendalism. The thesis discusses policy options to break this vicious circle.

## **PART I: INTRODUCTION AND RESEARCH METHODOLOGY**

## **CHAPTER I**

### **INTRODUCTION**

If it is recalled that about one in four black Africans or one in two West Africans is a Nigerian, that Nigeria is the world's ninth populous country and sixth largest oil exporter, and that the country's aggregate output of goods and services or GDP (at least in period of oil-centred prosperity) is greater than that of the rest of black Africa combined, then it is evident that the study of the 'Nigerian State' is of central relevance to the African condition.....<sup>1</sup>

#### **1.1 Objectives**

In 1988, (twenty-eight years after independence), the Nigerian economy was both insolvent and illiquid, beset with high inflation, growing unemployment, a depreciating currency and a growing fiscal deficit. Part of the solution based on International Monetary Fund (IMF) and International Bank for Reconstruction and Development (World Bank) reports, was deregulation of the banking system. Nevertheless, thirteen years later, the financial sector is in crisis and deregulation has contributed to making the overall economic situation worse.

What went wrong? Was the IMF advice flawed? Was the problem with the implementation? With the timing? What is the role of law and has politics any relevance? These questions make an inquiry into the fundamental causes of the persistent financial and economic crises and an assessment of the efficacy of the regulatory and policy instruments inevitable.

This work examines financial regulation and deregulation of the Nigerian banking system focusing on the following issues :

1. The nature and modes of financial regulation in Nigeria and why it was

<sup>1</sup>. See Graf, William. D., The Nigerian State, James Currey, London.( 1988 ), p. xiv.



needed in the first place.

2. The changes in the regulatory approach of the Nigerian banking system.
3. The impacts of the banking regulation on the Nigerian banking system.
4. The effects of banking deregulation.

The following research hypotheses have been formulated to guide the analysis :

1. The nature of financial regulation of a banking system has a primarily significant influence on its efficiency, effectiveness and performance.
2. The character and ethics of the political, social and bureaucratic classes and the governance structure of a nation influence and determine the nature of financial regulation and deregulation of the banking system.
3. The modes of financial regulation and deregulation of Nigerian banking system were repressive, corruptive, exploitative and ruinous.
4. A suitable socio-political environment and conducive legal frameworks are critical pre-conditions for the success of a financial deregulation programme.

The primary objective of this work is to analyse the factors which influence and affect the laws and policies regulating banking in Nigeria, and their influence upon the effectiveness of banking regulation and deregulation. In this respect, this work considers the Nigerian legislative, executive and judicial processes with particular reference to financial regulation and deregulation of banking system.

## **1.2 Methodological Approach**

Economic theory offers a useful normative standard for analysing and evaluating law. Indeed, economics provided the intellectual foundations for financial deregulation<sup>2</sup>, and banking regulation shows the stamp of economic thinking<sup>3</sup>.

<sup>2</sup>. See Cooter, R and Ulen, T., Law And Economics. Addison-Wesley, Reading. (1997). 2nd edition. p. 2.

<sup>3</sup>. See Posner, R., " The Roundtable Discussion ", in Baird, D. G., " The Future of Law and Economics : Looking Forward " (1997) 64 The University of Chicago Law Review, no. 4, 1129 at p. 1144.

Legal and economic scholarship have made a robust contribution to the understanding of the interconnection between the legal and economic systems<sup>4</sup>. Yet this study goes beyond the traditional confines of law and economic discipline, and rather embraces a pragmatic approach in recognition of the significant limitations of the law and economic theory in analysing the issue under discourse in a highly political and legally unstable environment like Nigeria. In any case a purely economic approach is unsatisfactory to the extent that economists neglect the legal, institutional and political underpinnings of the economy.

Indeed, a leading professor of banking and finance, Charles Goodhart, confesses that "economists tended to take the legal underpinnings of the economy too much for granted"<sup>5</sup>, and added that the "effects of the rule of law on the economy is pervasive, but rarely examined in any depth by economists"<sup>6</sup>. It may also be emphasised in the words of Godelier, that "it is not possible to analyse the economic sphere in all its aspects by means of economic science alone, because what is economic is implied by the functioning of the non-economic structures, which thus to some extent determine its significance"<sup>7</sup>. The optimum conditions for development are not "merely economic but also psychological, sociological, legal,...."<sup>8</sup>.

<sup>4</sup>. See Epstein, Richard. A., " Law and Economics : Its Glorious Past and Cloudy Future "(1997) 64 The University of Chicago Law Review, no. 4, pp. 1167 - . 1174.

<sup>5</sup>. See Goodhart, C.A.E., " Economics and the Law : Too Much One-Way Traffic ? " (1997) 60 M.L.R. 1st p. 2.

<sup>6</sup>. Ibid., p. 4.

<sup>7</sup>. See Godelier, Maurice., Rationality and Irrationality in Economics. Monthly Review Press. New York & London.(1972), p. 26.

<sup>8</sup>. Ibid., p. 31.

Equally, a positivistic legal approach is unsatisfactory since it is usually expository rather than critical, descriptive and not empirical<sup>9</sup>. Indeed, law has at least three dimensional rationality<sup>10</sup>, namely, formal rationality, instrumental rationality, and substantive rationality. A statement of the law as it is will satisfy the formal rationality and a positivistic approach. The instrumental rationality however requires an inquiry into whether particular legal interventions have attained their intended effect, and substantive rationality could only be satisfied by investigating whether the particular law conforms with some justifying principles or ends.

The issue of state interventionism in banking is not merely of law and its role, but raises "the question of the relationship of the political to the economic"<sup>11</sup> and concerns the institutional frameworks which reinforces social class. Thus, the political undercurrents of law and its social dimensions require examination. Indeed, the ultimate premises of legal theory affecting banking system is political<sup>12</sup>, and law often caters for narrow coalitions rather than public interest<sup>13</sup>. Hence, it has been said that the conception of the state as a non-capitalist agent is a myth<sup>14</sup>. Quite often, law and state serve some interests, and the laws underpinning financial regulation and deregulation of Nigerian banking system afford a classic example.

Therefore this work also examines the political, social and institutional factors that influence the laws governing financial regulation and deregulation in Nigeria, and analyses the roles of these factors on the effects of the laws. It is a core premise of this study that

<sup>9</sup>. See Adams, John and Brownsword, Roger.. Key Issues In Contract, Butterworths, London. (1995). pp. 3 - 4.

<sup>10</sup>. Ibid., pp. 10 - 13.

<sup>11</sup>. See Picciotto. Sol., "Firm and State in the World Economy ". in Faundez. J. and Picciotto. S. (eds.). The Nationalisation of Multinationals in Peripheral Economies. The Macmillan Press Ltd. London. (1978), p. 232.

<sup>12</sup>. See Posner. R.A., Overcoming Law, Harvard University Press, Cambridge, (1996). Third printing. p. 83.

<sup>13</sup>. Ibid., p. 400.

<sup>14</sup>. See Faundez and Picciotto, op. cit., p. 2.



the institutional efficiency and capability of the financial regulators, and the impacts of banking regulation and deregulation, are dependent on the legal and political superstructure governing the financial system and the constituent state. Thus, the roles of law and political system are fundamental to a balanced analysis of financial regulation and deregulation. It also a thesis of this work that an understanding of the basic economic precepts influencing financial system is crucial to any legal analysis of the nature and consequences of financial regulation and reforms.

Indeed, the appropriate laws fostering economic development in a third world country can neither be understood nor fashioned without " an extensive knowledge of the detailed facts of that particular country's social, political and economic milieu "<sup>15</sup>. The case for a pragmatic study therefore becomes compelling. In embracing this methodological approach, we adopt the Posnerian thesis that a pragmatic "conception of legal theory is broad, sweeping within it matters that might be thought to belong to political or social theory rather than to legal theory. This breadth reflects the broadening of interests that is characteristics of contemporary legal scholarship" <sup>16</sup>.

The need for a pragmatic research in the area of financial deregulation<sup>17</sup> and on the impact of law and economics<sup>18</sup> has been emphasised . Seidman and Seidman have also concluded that "in the real world, development problems' interconnectedness dictated that researchers explore across disciplinary boundaries. When they did, they discovered that particular theories of law and the state tended to resonate with parallel social science theories"<sup>19</sup>.

<sup>15</sup>. See Seidman, A and Seidman, R.B.. State And Law In The Development Process, The Macmillan Press, London, (1994), p., 352.

<sup>16</sup>. See Posner (1996). op. cit., p. vii.

<sup>17</sup>. See World Bank Policy And Research Bulletin. October-December 1997. World Bank. Washington D.C., p. 2.

<sup>18</sup>. See Coase, Ronald.. " The Roundtable Discussion ". in Baird, D. G.. " The Future of Law and Economics : Looking Forward " (1997) 64 The University of Chicago Law Review, no.4, 1129 at 1138. see also Becker, Gary.. " The Roundtable Discussion ", in Baird, D. G., *ibid.* p. 1149.

<sup>19</sup>. See Seidman and Seidman, op. cit p. 90.



Accordingly, this study embraces an approach which traverses disciplines including law, economics, political economy, political science, history and international finance, and considers financial regulation and deregulation of the Nigerian banking system by evaluating relevant empirical evidence including indicators of macroeconomic<sup>20</sup> and microeconomic<sup>21</sup> performances.

The choice of financial regulation and deregulation is based on its currency and topicality in international and domestic circles. The problem of banking and financial system has shifted to centre stage in the last two decades. Banking crises have become the "issue du jour"<sup>22</sup>, and the World Bank and IMF continue to devote enormous resources to researches on financial regulation and deregulation of the banking sector in view of the crises in both industrial and developing countries<sup>23</sup>. Concerning Nigeria, many scholars including Ann Seidman (1986), Soyibo and Adekanye (1992), and Aryeetey (1997) have called for studies evaluating the impact of regulation on the Nigerian banking system.

The approach of this work has not been utilised in the study of the subject-matter in respect of Nigeria or a country like Nigeria prior to this study. Neither has the process legal form of financial regulation and deregulation been analysed in its economic, political and historical contexts. The terms financial system, financial regulation and deregulation are used strictly in this work to refer only to the banking system except as otherwise indicated.

<sup>20</sup>. Macroeconomic indicators include rates of interest, inflation and economic growth, changes in the size of the federal deficit and national debt, and changes in the distribution of national wealth and income.

<sup>21</sup>. Microeconomic indicators include changes in the profitability of banking system, the scope and frequency of financial failure, the magnitude of the collapse of banks and other financial institutions, rescue packages, efficiency rates and market interventions.

<sup>22</sup>. See Fischer, Stanley., (IMF Deputy Managing Director). IMF Survey, October 28, 1996, IMF , Washington D. C., p. 345.

<sup>23</sup>. See World Bank Policy And Research Bulletin, January-March 1996, World Bank, Washington D.C., p. 5., See also World Bank Policy And Research Bulletin, July-September 1997, World Bank, Washington D.C., p.5., IMF Survey, Feb.9, 1998, IMF, Washington D.C., .

### 1.3 Remarks on Relevant Literature and Sources

There are very few Nigerian literature on legal aspects of financial regulation and deregulation of Nigerian banking system,<sup>24</sup> or on the role of law and politics in the subject matter. Furthermore, legal literature has generally failed to consider the economic precepts influencing both banking regulation and deregulation. However, there are legal studies examining the changes in banking laws and regulations in Nigeria. The immediate pre 1991 banking laws have been examined by Sofola (1988), and Aderemi (1991). The 1991 banking law reforms have received significant scrutiny from Osunbor (1992), Umezuruike (1992), Adeniji (1991), and Kembi (1991). These works suffer from common defects.

They are mainly descriptive and doctrinal in the traditional characteristics of legal scholarship in West Africa.<sup>25</sup> The economic, political and social fundamentals of banking regulation and deregulation are neglected. These defects seriously hamper their contributions to the debates on financial deregulation in Nigeria. Indeed, it is not surprising that these works find the Nigerian banking laws generally satisfactory. This study disagrees with these views and contends that the Nigerian banking laws require urgent fundamental reforms. It may be added that Uche (1998) and Uche and Osho (1998) discuss reforms to share capital and deposit insurance of Nigerian banks, but both articles did not address the core issues of banking deregulation<sup>26</sup> and they have economic orientation.

<sup>24</sup>. Yerokun (1989) and Ajomo (1995) have written on legal aspects of Structural Adjustment Programme (SAP) in the country. Financial deregulation is not considered.

<sup>25</sup>. see Ghai. Yash., " Law, Development And African Scholarship "(1987) 50 M.L.R. p. 750.

<sup>26</sup>. The core issues of banking deregulation such as interest rate deregulation, exchange rate liberalisation, abolition of directed credit and privatisation.



The issue of financial liberalisation has been dominant in the Nigerian intellectual and banking circles<sup>27</sup>. Okigbo (1993) underlines politics as the greatest danger to financial liberalisation in Nigeria. Ojo (1994) and Soyibo (1997) advocate political reforms including democracy as critical to Nigerian banking deregulation. Lewis and Stein (1997) also demonstrate the political captivity of the Nigerian banking system, while Collier (1996) emphasises that the greatest problem of financial liberalisation in Nigeria is that those political institutions that govern economic policies are ill-suited, and advocates a mechanism for government restraint. Inanga (1997) and Gelb (1997) underscore the importance of political reforms in financial reforms in Africa.

These works however gloss over the legal underpinnings of these problems. Indeed, as Seidman and Seidman (1994) assert politics and law are self reinforcing, the political imperatives usually become codified as legal dictates. Thus, the political problems are not merely actions of some misguided politicians, but very often the lawful acts of duly constituted authorities. Therefore, it is essential to identify the core legal dictates that reinforce the untoward political intervention in financial deregulation in Nigeria. These works fall short of this demand.

Most recently, Umunnaehila (1996) studies bank failure in Nigeria. It is another insightful economic work that completely ignores regulatory, political and legal undercurrents. In attributing the causes of bank failure to mainly economic causes, it fails to underscore the role of political intervention, regulatory dysfunctionality, and defective banking laws.

Resourceful treatises on the early banking system in Nigeria have been provided by IBRD Report (1954), Jucker-Fleetwood (1964), Brown (1966), Ekpo (1979), and Uche (1997). The nature of the Nigerian banking system and the effects of its regulatory and policy mechanisms have been critically examined by Okigbo (1981), Nwankwo (1980),

<sup>27</sup>. The treatises such as Okigbo (1993), Olashore (1988), Nwankwo (1990,1991), Ojo (1992,1994), Soyibo and Adckanye (1992), Soyibo (1997), and Odozi (1993,1995) among numerous others, have assessed and evaluated financial deregulation of the Nigerian banking system

Olashore (1988), and Onoh (1980). These works found that the Nigerian banking system was highly regulated and massively repressed. The works are rich in economic analysis and lucid, but fail to establish the nexus between the banking laws and the deleterious effects on both the banking system and Nigerian economy. It seems law does not matter. Although, the political motivations undermining the banking system are occasionally underscored, the fundamental role of politics in the nature, design, and implementation of Nigerian banking laws and regulation are neglected, while the absence of robust regulatory analysis is ubiquitous.

This study in unravelling the political issues influencing financial regulation and liberalisation in Nigeria has benefited from the studies of Ake (1985), Joseph (1987), Diamond (1988), William Graf (1988) and Lewis (1996) who have found that capital accumulation motivates the hyperactivity of Nigerian elite in state and governance. State intervention provides the mechanism for accumulation, and political instability results from unbridled quest for political power as a means to economic wealth. Thus, Nigerian elites are conflict generators rather than conflict managers.

The foregoing works provide the schematic framework for identifying the political incentives that underpin banking regulation and deregulation in Nigeria. They outline the symbiotic relationship between political instability and economic pursuits of Nigerian elite, and conclude like the economists that the reversal of state roles in economic spheres is indispensable. This study examines the law and policy of banking regulation and deregulation in the light of these political treatise.

The economic underpinning of financial regulation and deregulation makes economic theories fundamental building blocks for this study. Indeed, the current wave of financial liberalisation has been largely influenced by academic writings of Professors Mckinnon and Shaw. The seminal works of Shaw (1973) and Mckinnon (1973), and illuminating literature that provide the theoretical framework of this work are discussed in the next chapter.



This study in proposing reforms of the Nigerian banking laws and policies is influenced by its multidisciplinary approach to the issue of financial liberalisation and its comparative orientation to legal study. It has benefited from some major comparative works on the incidence of financial liberalisation in Latin America, America and Africa such as Diaz-Alejandro (1985), Veneroso (1986), Sundararajan and Balino (1991), Husain and Faruquee (1994), Garcia-Herrero (1997) . Additionally, the works of OECD (1992), Zahler (1993), Scott and Wellon (1996), Ellinger and Lominicka (1994), Goode (1989), Canova (1995), Cottarelli (1993), Issing (1993), Wood (1995), and Cranston (1997) on banking, central banking, and financial laws and regulations in different countries of the World have enriched this study.

#### **1.4 Basic Sources**

Three basic sources of data gathering have been employed in this study namely primary and secondary sources, and interviewing.

##### **1.4.1 Primary Sources**

These have been opined as those sources that are direct, authoritative, and not influenced by any body's opinion<sup>28</sup>. They include about 50 Nigerian banking and related legislation. Foreign banking legislation in a dozen other countries was also scrutinised for comparative insights. The annual banking and monetary directives and policies of the Central Bank of Nigeria (CBN) also form a substantial part of the primary sources utilised. The economic data were obtained from the Annual Reports of both the Central Bank of Nigeria (CBN) and Nigeria Deposit Insurance Corporation (NDIC). The Annual reports and financial publications of the International Monetary Fund (IMF) and International Bank for Reconstruction and Development (World bank) also provided another reliable source of data. The CBN occasional publication such as ' Twenty Years of Central Banking in Nigeria, 1959-1979 ' afforded us a reliable source of direct information. The

<sup>28</sup>. See Chatterjee, Charles.. Methods of Research in Law. Old Bailey Press Ltd. Kent. (1997). p. 23

cases considered in this study are certified true copies obtained directly from the registry of the Failed Bank Tribunal in Lagos since they are unreported.

#### **1.4.2 Secondary Sources**

These are sources which are not of a primary nature. The opinions of experts, books and published articles belong to this category<sup>29</sup>. This study benefits immensely from these sources.

Of importance, the prolificacy of the CBN officials including the Governor, a Deputy Governor, and Director of Research among others, has ensured a steady flow of analysis through numerous published works between the regulators and the reading public. These works also provide insights into the expert and personal views of key officers of the CBN. This study relies on these secondary sources of high persuasion. Many distinguished Nigerian bankers, economists and scholars as well as their international contemporaries have written extensively on the Nigerian banking system and economy. This study tapped from these large and multifarious armouries of information.

The publications of the CBN, NDIC, and Chartered Institute of Nigerian Bankers (CIBN) have proved significant sources of information and data. The Financial Institution Training Centre (FITC) provided a reliable source of financial information through the organisation of annual seminars and conferences for Nigerian banks' directors and executives, and consistent publication in full of the papers and proceedings of such specialised meetings. The bulk of the FITC publications form a significant source of this study's data and information. This study also relies on numerous Nigerian and international newspapers and magazines. The bulletins and research publications of IMF and World Bank are also used.

#### **1.4.3 Interviews**

Fieldwork was undertaken in Nigeria between May and July 1997 for the purposes of gathering data and material for this study. During the fieldwork, scheduled semi-

<sup>29</sup>. Loc.cit.



structured interviews were conducted with selected interviewees based on their professional roles, status, competence, expertise and experience of the Nigerian banking system and regulatory structure. They are individuals who occupy the centre stages of financial deregulation in Nigeria. Their institutions play significant roles in the financial sector either as the regulators or the regulated institutions. These interviewees included

(a) Two directors of the CBN, and one senior officer of CBN. All these interviewees granted interviews only on strict conditions of anonymity because of the fear of political reprisal by the military government. Another senior official of the CBN declined interview even on the condition of anonymity.

(b) Dr Wole Adewunmi, President , Chartered Institute of Nigerian Bankers and former Executive Director, Nigerian Deposit Insurance Corporation (NDIC).

(c) Hon. Justice M. Ope-Agbe, Chairman, Failed Bank Tribunal, Zone II, Lagos.

(d) Mr Adeyemi Osinubi, Banker and former Chief Legal Officer, National Bank of Nigeria.

The interviewees in group (a) furnished information and insider perspectives of the nature, design, and dynamics of banking regulation and deregulation. Their views are most revealing. Dr Adewunmi provided the insights into the perspectives of the Nigerian bankers as their representative. Additionally, Dr Adewunmi also offered expert opinions on the regulatory system having regards to his experience as the immediate past executive director of NDIC, one of the main banking regulatory bodies. This interviewee also provided some intellectual flavour and material because he is a reader in banking and finance at University of Lagos. It may also be mentioned that Dr Adewunmi was a former commissioner for finance, hence brought his knowledge of politics of banking and finance to bear on his opinion.

Hon. Justice Ope-Agbe is the most senior judge handling criminal and civil cases involving failed banks. He has tried most of the celebrated cases involving Nigerian banking fraudsters. His Lordship graciously provided us with information and insights into

the causes of bank failure based on the evidence adduced before the Tribunal in criminal and civil cases concerning failed banks. Mr Osinubi is a banker cum lawyer and was the Chief Legal Officer of the National Bank of Nigeria Plc, (the Nigerian oldest and first troubled bank), when the bank failed. He put his insider views on the failure of the bank and others, and the impact of financial deregulation on Nigerian banks at our disposal. These six selected interviewees provided diverse, qualitative and rich information that forms a significant building block of this study.

The interviewing mechanism enabled us to assess the reliability of the information and evaluate the veracity of the interviewees. The semi-structured nature of the interviews allowed us to ask questions in our preferred order, and repeat a question in different ways until the respondent had understood it. We were able to raise incidental questions, and procure answers. It also enabled us to ensure that the questions were answered personally by the interviewees without the influence of other persons. The non-verbal behaviours of the respondents were also studied. We are convinced that the interviewees provided us with information of utmost veracity.

Financial and time constraints dictated the limited number of interviewees, and the fact that the research is based on banking regulation and deregulation which are predominantly structured by legislation, policies and case laws prevented us from employing any sociological approach. Questionnaires were not administered because of time and financial constraints, and logistical difficulties. We also prefer face to face, direct and structure interviews with selected relevant persons to diverse, indirect and uncontrolled questionnaires. It is also doubtful given the political sensitivity of the subject-matter that responses would have followed such questionnaires, since they may be thought to have originated from the state security apparatus determined to weed out critics.



## **1.5 Organisation of the Thesis**

This thesis is divided into six parts consisting of eleven chapters. Part One comprises one chapter on the Introduction and Research Methodology. It gives an account of the research questions, hypotheses, and methodology embraced by this work, and underscores the broad themes of the work.

Part Two contains two chapters on the theoretical underpinnings of this work and country background on Nigeria. Chapter Two analyses the concept of financial regulation and identifies the objectives and types of financial regulation of the banking system. It further discusses the classical theory of financial regulation that advocates regulatory intervention in the banking system, and outlines a counter theory that challenged regulatory intervention in banking system. The principles of financial liberalisation and deregulation which preaches liberalisation of interest rate regulation, credit regulation and banking activities' restrictions are analysed.

Chapter Three provides an insight into Nigeria from its pre-colonial era to the contemporary time. It underscores the political, economic, historical, constitutional, and social factors that influenced the founding and development of the country, and there effects on the present political and economic problems confronting the country.

Part Three consists of two chapters. Chapter Four contends that the nature, mode and techniques of banking regulation in Nigeria during the period between 1892 and 1985 were dictated by historical evolution of the banks and the environmental factors, the socio-political and economic circumstances of the country, and the theoretical influence of the classical theory of regulatory intervention. It argues that banking regulation in Nigeria contrary to widely held opinion was largely laissez-faire between 1892 and 1967 which coincidentally marked the major part of the colonial era. The Nigeria banking regulation became obstructive and interventionist in 1968 with the political hegemony of the military class and the political rentier class. The Nigerian civil war perhaps played a role in the emergence of the interventionism.

Chapter Five examines the effects of the specific banking regulatory norms on the Nigerian banking system between 1960 and 1985, (the immediate pre-deregulation period) in the context of the theoretical formulations of the theories of regulatory repression of the banking system. It discovers that the banking and related laws and regulations in the pre-liberalisation era when examined considering their micro and macro economic effects were highly repressive, inefficient, corruptive and deleterious. It further discovers the rampancy of financial repression through governmental borrowings and subordination of the financial regulator. A critical assessment of the era is undertaken in the closing part of the chapter.

Part Four is composed of four chapters. Chapter Six chronicles the circumstances in which the IMF and the World Bank compelled the Nigerian government to adopt financial liberalisation policy of the banking system as a core measure of its structural adjustment programme. It highlights the prevarication of the Nigerian government and the concessions by the IMF and World Bank. A crucial point made is that the Nigerian government embarked on the liberalisation programme with great reluctance and without any serious conviction or commitment, and the Bretton wood institutions were aware of these facts.

Chapter Seven contains an analysis of the legal, institutional and policy changes that underpin the banking deregulation in the periods between 1985 and 1997. The changes in regulatory dispensation due to changes in political regimes are underscored. It also contains a critical exposition of the banking legislation and policies of the banking system during financial deregulation, and highlights their defects, omissions and inherent conflicts.

Chapter Eight analyses the consequences of financial liberalisation of the banking sector. It embraces some indices as gauge for measuring the effects of banking deregulation. The indices include the growth of the banks, changes in financial savings,



level and structure of interest rate, competitiveness and efficiency of the system, profit, and the system's integration with the international banking system.

Chapter Nine examines bank failure in Nigeria, the most devastating consequence of financial liberalisation . It describes the high magnitude of banks and financial institutions' failure and identifies political corruption and opportunism as well as human factor as the major causes of bank failure in the country. Political ineptitude and regulatory inertia are constant decisive factors influencing and undermining the regulatory and judicial responses designed to stem the tide of bank failure, and thus have aggravated the macroeconomic imbalance.

Part Five is made up of one chapter. Chapter Ten entails a critical inquiry into the fundamental factors that undermined the banking deregulation. It also evaluates the mechanism of financial deregulation in the light of the prognosis of the concept and theory of financial deregulation. The chapter surmises that macroeconomic instability and fiscal recklessness, powerlessness of regulatory agencies, political dialectics of the Nigerian state, and regulatory distortions and policy inconsistencies undermine financial deregulation. The chapter criticises the toleration of the irresponsible successive Nigerian government by the IMF and World Bank and advocates greater roles for political and legal considerations in the design of financial liberalisation programme.

Part Six contains one chapter. Chapter Eleven is the conclusion. It reflects on the research questions raised in this work and captures its findings. It also discusses a number of suggestions for the reform of the critical problems of the Nigerian financial system.

**PART II: CONCEPTS AND THEORIES OF FINANCIAL REGULATION  
AND DEREGULATION**

## **CHAPTER II**

### **FINANCIAL REGULATION AND DEREGULATION OF THE BANKING SYSTEM: NATURE AND THEORY**

#### **2.1 Introduction**

This chapter analyses the nature and concept of financial regulation of the banking system. It also discusses the theoretical formulations underpinning the nature, mode, and techniques of banking regulation and deregulation. The chapter underscores the role of Central Bank as the main financial regulator and the problems created by political interference and conflict of interest in the process of financial regulation. The political nature of financial regulation and the pervasive influence of the political and elite interests in banking regulation and deregulation are also highlighted.

The chapter contains ten sections. The first is the introduction. The second, third and fourth sections discuss the concept, objectives and types of financial regulation of the banking system. The fifth section analyses the role of Central Bank in financial regulation and the attendant problems, and the sixth section contains a discussion of the interaction between politics, law and financial regulation. The seventh section discusses the influence of classical theories on financial regulation.

The counter theory that challenged and contradicted the classical regulatory intervention in the banking system is analysed in the eighth section. The ninth section is devoted to a theoretical exposition of the concept of financial liberalisation and deregulation which is the remedial policy prescription for financial repression and regulatory intervention. It also examines the developments and refinements of the concept of financial liberalisation by various intellectuals. The conclusions are in the tenth section.



## 2.2 The Concept of Financial Regulation

Regulation has no generally accepted definition<sup>30</sup>. The literature is fragmented and specialised since regulation has an extensive scope and traverses the fields of economics, law, and political science. Each scholar attempts a definition of regulation from the intellectual microscope of his speciality. A general survey of literature reveals some of the attempts at unravelling the mystery of the term "regulation".

Stigler<sup>31</sup> proffers one of the broadest definitions of regulation by asserting that "(A)s a rule, regulation is acquired by the industry and is designed and operated primarily for its benefit ". A little earlier, Kahn<sup>32</sup> had defined public utility regulation as "direct governmental prescription of major aspects of their structure and economic performance..... control of entry, price fixing, prescription of quality and conditions of service and the imposition of an obligation to serve all applicants under reasonable conditions".

These econometric views of regulation have been criticised for excluding the market setting from the definition of regulation<sup>33</sup>. A panacea is provided by Spulber <sup>34</sup> who posits regulation as " general rules or specific actions imposed by administrative agencies that interfere directly with the market allocation

<sup>30</sup> . See Ogus, A. I. and Veljanovski, C. G., Readings in the Economics of Law and Regulation, Clarendon Press, Oxford, ( 1984 ), p. 233.

<sup>31</sup> . See Stigler, George J. " The Theory of Economic Regulation " (1971) 2 Bell Journal of Economics and Management Science . 3 - 21. (Spring) .He identifies four principal categories of regulations procured from the state by the industry as direct subsidies of money, control of new entry, policies promoting complimentary goods and discouraging substitutes, and control of prices.

<sup>32</sup> . See Kahn, A.E., The Economics of Regulation: Principles and Institutions, Cambridge,Mass:London (1988).

<sup>33</sup> . See Spulber, Daniel F. , Regulation and Markets , The MIT Press, Cambridge, Massachusetts, London, England. (1989) p.21.

<sup>34</sup> . Ibid., p.37.

mechanism or indirectly by altering consumer and firm demand and supply decisions ".

In his classic treatise, Mitnick<sup>35</sup> postulates a broad definitional perspective of regulation as "the intentional restriction of a subject's choice of activity by an entity not directly party to or involved in that activity '. He also offers a restrictive concept of regulation as "the public administrative policing of a private activity with respect to a rule prescribed in the public interest " <sup>36</sup>.

A criticism of the opinions of Spulber, and Mitnick, is that their prognoses did not capture some vital characteristics of regulation. Both views are public administration biased. That regulations often emanate from other sources than an administrative agency, and such agency may be a party involved in the activity<sup>37</sup>, exposed the limitations of the definitions . Perhaps, these perceptions were influenced by their orientations. Hence, Kenneth Meier <sup>38</sup> has advocated a multidisciplinary approach to the understanding of the concept of regulation which he defines as "any attempt by the government to control the behaviour of citizens, corporations, or sub governments"<sup>39</sup>.

We subscribe to an all embracing and broad definition of regulation of D.T. Llewellyn<sup>40</sup> as "a body of specific rules or agreed behaviour, either imposed by

<sup>35</sup> . See Mitnick, Barry M , The Political Economy Of Regulation : Creating, Designing and Removing Regulatory Forms, Columbia University Press, New York, (1980), p.5.

<sup>36</sup> . Ibid., p.7.

<sup>37</sup> . For examples the Central Bank of Nigeria and the Federal Mortgage Bank of Nigeria engage in commercial and mortgage banking respectively even though they are the regulating authorities for these banking activities.

<sup>38</sup> . Meier, Kenneth J, Regulation : Politics, Bureaucracy, and Economics. St. Martin's Press, Inc. New York,(1985), p.7.

<sup>39</sup> . Ibid. p.1.

<sup>40</sup> . Llewellyn.D.T., The Regulation and Supervision of Financial Institution, The Institute of Bankers. London.(1986). p.9.



some government or other external agency or self-imposed by explicit or implicit agreement within the industry, that limits the activities and business operations of financial institutions". The process of monitoring prudence or conformity to the regulations is characterised as supervision <sup>41</sup>.

The utility of this definition lies in its multidimensional and functional nature. It encompasses public as well as private regulations, and devoid of any institutional bias. Specifically, the definition centres on financial regulation that is the concern of this study. In the final analysis, it seems the pragmatic conclusion is that a regulation is what regulators do in fact.

### **2.3 The Objectives of Financial Regulation**

The broad theories of regulatory origin can be classified into private or public interests' theories<sup>42</sup>. The private interest theories are subdivided into three sub theories namely consumer protection theory<sup>43</sup>, industry protection theory<sup>44</sup> and bureaucratic behaviour theory<sup>45</sup>. On the other hand, the public interest theories are dominated by concerns of protecting or balancing the interests of the community or public<sup>46</sup>.

An alternative theory characterised as a deviation from public interest effects in public interest theory is the Capture theory which states that the

<sup>41</sup> . Loc. cit.

<sup>42</sup>. See Mitnick, op cit., p.158.

<sup>43</sup>. The Consumer protection theory concerns the protection of the consumer of the product or activity hence the regulations are sought by the consumer or their agents.

<sup>44</sup>. The Industry protection theory entails the protection of the producers of the product or activity and they constitute the advocates of regulation.

<sup>45</sup>. The bureaucratic behaviour theory under which regulations are demanded by the bureaucrats to maintain their authority or expand the spheres of their influence.

<sup>46</sup>. Mitnick asserts that public interest in the theory has five conceptions namely a balancing concept, a compromising concept, trade-off, national or social goals and particularistic, paternalistic or personal dictated concept. He identifies a general typology of public interest definitions which ranges from satisfaction of dictatorial preferences to pareto optimality, and to pluralistic aggregation of preferences.

regulatory mechanism is usually captured by the regulated parties so that it serves their interests rather than the public interest <sup>47</sup>.

The purport of these theories about the financial sector is that financial regulation is usually enacted to protect the consumers who are the depositors , or the regulated financial institutions themselves<sup>48</sup>. Often regulations are designed to protect the financial system as a collective unit. This is the systemic interest<sup>49</sup>. It is observed that regulation rarely has the exclusive interest of consumer as its end, and the systemic interest is too remote to the consumer's need. In this regard, public interest is labelled a rhetoric, frequently invoked according to Posner<sup>50</sup> even where a variant of the public interest is not actually operative. In the same vein, regulations motivated by the specific interest of the regulated sector have been justified by reference to consumer interest or systemic interest .

Most recently, Mathias Dewatripont and Jean Tirole<sup>51</sup> enunciate the representation hypothesis as the basis of financial regulation. The gravamen of the hypothesis is that banks and most financial institutions have natural tendency towards moral hazard and adverse selection<sup>52</sup> that make their monitoring by depositors imperative. The monitoring function cannot however be performed by the depositors due to their inability, incapacity, or inadequacy, and the onerous

<sup>47</sup> .See Mitnick, Ibid., p.95.

<sup>48</sup> . See Rudolph, B. " Capital requirements of German banks and the European Community proposals on banking supervision " in J. Dermine ( ed.). European Banking in the 1990s, 2nd ed. Oxford: Blackwell. (1993),pp. 373-385.

<sup>49</sup> See Llewellyn, D.T. , The Regulation and Supervision of Financial Institution, The Institute of Bankers, London, ( 1986 ). p. 11.

<sup>50</sup> . Posner, Richard A, " Theories of Economic Regulation " (1974) 5 Bell Journal of Economics and Management Science, p.355. (Autumn).

<sup>51</sup> . Mathias Dewatripont and Jean Tirole. The Prudential Regulation of Banks. The MIT Press. Cambridge. (1994). p. 32.

<sup>52</sup> . Adverse selection refers to a situation where bankers lend to risky customers.



nature of the monitoring tasks. Hence, the necessity for private or public representatives of depositors<sup>53</sup>.

Another plank on which the rationalisation of regulatory intervention is based is the market failure thesis<sup>54</sup>. The existence of regulation has been justified by the necessity of correcting certain market failures which may be detrimental to the consumers if market mechanisms were freely operative without intervention<sup>55</sup>.

A number of market failures can be identified such as the existence of natural monopoly and entry barriers<sup>56</sup>, internalities<sup>57</sup> like asymmetric information, moral hazard, costly contingencies, absence of knowledge of technicalities of product especially safety and quality, and externalities<sup>58</sup> indicating the wider effect on the public which is not contemplated by producer and consumer. In this respect, regulations may have corrective or redistributive effects or may affect allocative efficiency. Thus, the intermediate goals of regulation are posited as efficiency, safety, or equity<sup>59</sup>. The market failure argument has been challenged as inadequate rationalisation of governmental intervention since government failure may be costlier than market failure<sup>60</sup>.

<sup>53</sup>. Ibid., pp. 31- 32.

<sup>54</sup> . Llewellyn, D.T. , op cit., p. 10.

<sup>55</sup> . Spulber, op cit., p. 21.

<sup>56</sup> .See Breyer, S., "Analyzing Regulatory Failure : Mismatches, Less Restrictive Alternatives, and Reform", (1979) 92 Harvard Law Review, 547, 552 - 60.

<sup>57</sup> . Loc. cit.

<sup>58</sup> . See Spulber, op. cit.,p.46.

<sup>59</sup> . See Mitnick, op cit ., Chapter v .

<sup>60</sup> . See Weisbrod, "Problems of Enhancing the Public Interest : Toward a Model of Government Failures "in Weisbrod, B. A., Handler, J. F., and Komesar, N.K., (eds.), Public Interest Law : An Economic and Institutional Analysis ( 1978 ), chapter 3.

The public interest, systemic interest, and market failure theses have been adduced to vindicate regulatory interventions in financial sector. The Campbell Commission<sup>61</sup>, set up to review the financial system in Australia, espoused the rationale for government intervention in the financial system as efficiency, diversity of choice, competitive neutrality, stability of the financial system, macroeconomic stability, and social objectives <sup>62</sup>.

Financial regulations are generally strict<sup>63</sup> and technical. They are often directed at banks and financial institutions to ensure their safety and soundness by curbing competitive aggressiveness and the attendant risk. As Bain<sup>64</sup> observed "the tension between the benefits of competition and the cost and risk-reducing advantages of size is particularly acute in the financial system, because competition adds to the risk of failure".

## **2.4 Types of Financial Regulation of the Banking System**

Financial regulation is generally classified into two modes, namely, the traditional or indirect forms of financial regulation and the direct forms of financial regulation. The direct forms<sup>65</sup> of financial regulation place restrictions on a specific type of financial institution (usually deposit banks) by limiting their freedom to acquire assets and liabilities. The most common direct forms of financial regulation include quantitative ceilings on bank credit, selective credit controls, interest rate regulation, and exchange rate control.

<sup>61</sup> . AGPS. Australian Financial System. Final Report of the Committee of Enquiry (Campbell Report) . Australian Government Publishing Service.(1981).

<sup>62</sup> Ibid., p.2.

<sup>63</sup> . Meier. op cit., p.45.

<sup>64</sup> . Bain, A.D. . Economics of the Financial System. Oxford . Martin Robertson. (1981).

<sup>65</sup> . See CBN. "Monetary Policy in Nigeria ". CBN Briefs. Research Department. Series No. 95/03. CBN. Lagos, (1995). p. 2.

The indirect forms<sup>66</sup> of financial regulation consist of techniques which rely on the power of the monetary authority as a dealer in the financial markets to influence the availability and the rate of return on financial assets, thus affecting both the desires of the public to hold money balances and the willingness of financial agents to accept deposits and lend them to users. The major forms of indirect financial regulatory instruments are reserve requirements, discount rate and open market operations (OMO).

Most recently, three broad categories of financial regulation have been identified<sup>67</sup>. The first category consists of rules preventing systemic risks, and is subdivided into two classes, namely, prudential regulation and rules relating to the restriction of market forces. Prudential regulation entails capital requirements, solvency and liquidity ratios, and capital adequacy standards. Price regulation, restriction on capital flows, restrictions of banking activities and establishment are classified under the restriction of market forces.

The second category encompasses norms preventing individual risks such as disclosure rules, minimum competence and quality requirement, and deposit protection schemes. The last category is made up of rules promoting systemic efficiency like regulation of mergers, and prohibition of cartels and restrictive business practices.

## **2.5 Central Banks and Financial Regulation of the Banking System.**

The Central Bank of most countries acts as the main financial regulator of the banking system. When the first central banks were founded in Europe there was little consideration for their regulatory and supervisory roles in respect of the other banks. Instead, " initial impetus was much more basic, generally relating to

<sup>66</sup>. Loc. cit.

<sup>67</sup>. See OECD. Banks Under Stress. ( 1992 ). Paris. France. p. 33.



the financial advantages that governments felt that they could obtain from the support of such a bank"<sup>68</sup>.

The adoption of regulatory and supervisory roles by central banks was largely evolutionary<sup>69</sup> and eventually attained primacy in their functions<sup>70</sup>. The functions<sup>71</sup> of a Central Bank may be divided into macro and micro functions<sup>72</sup>. The macro<sup>73</sup> functions relate to its responsibility concerning the direction of monetary conditions in the economy, and the micro<sup>74</sup> function concerns the health and well-being of the banks in the banking system. It is been argued that the macro functions are largely grafted to the supervisory functions, hence "the central core and rationale for the existence and operation of a Central Bank is not necessarily to be found in its macroeconomic role"<sup>75</sup>.

The crux of the matter however is that most central banks have been unable to perform effectively and efficiently their micro functions of regulation and supervision of their respective banking systems due to many factors including governmental rent-seeking, political interference and conflict of interest. The tendency of most governments to extract inflationary tax from the public through the printing of paper money in moment of crisis has endowed central banks with inherent inflationary tendencies. In the words of Hayek, "practically all

<sup>68</sup>. See Goodhart, Charles., *The Evolution of Central Banks*, The MIT Press, London, (1988),p. 4.

<sup>69</sup>. *Ibid.*, p. 8

<sup>70</sup>. In most developing countries, the most important task of the Central Banks was the promotion of money and capital markets. See Bass, S. K., *Central Banking in the Emerging Countries*, Asia Publishing House, London, (1967), p. 240.

<sup>71</sup>. The tendency to add economic development and welfare goals to the functions of a Central Bank has been observed in Central Banking laws drafted after 1945. see Aufrecht, Hans., *Comparative Survey of Central Bank Law*, Stevens & Sons. London , (1965), p. 15.

<sup>72</sup>. See Kohn, Donald. L., " The Stability of Financial Markets : Central Bank Responsibility " in Effros, Robert. C.,(ed.), *Current Legal Issues Affecting Central Banks*, Vol.2, IMF, Washington,D.C., (1994). pp. 162-164.

<sup>73</sup>. The macro tools include open market operations and variation of discount rate.

<sup>74</sup>. The micro tools include discount window, regulation and supervision, and deposit insurance.

<sup>75</sup>. See Goodhart, Charles., (1988), *op. cit.*, p. 7

governments of history have used their exclusive power to issue money in order to defraud and plunder the people"<sup>76</sup>.

The existence of central banks has also provided many governments with financial leeway for excessive monetary expansion through deficit financing. Direct, enforced, finance of government expenditure by the central bank was clearly seen as potentially inflationary, and dangerous<sup>77</sup>. Additionally, the tendency of a central bank to subvert its micro functions in order to assist its government's financing difficulties has been identified. That some of the regulatory dictates of the central bank can impinge on the efficiency of the banking system is demonstrated as thus :

when the tax base and ability to borrow from the general public remains low, the enforcement of high (and rising ) required cash and liquidity ratios, in order to mop up what would otherwise amount to an excess currency issue, must be seen as a tax and additional burden on the banking system. Such burdens and taxes, in the form of high-required reserve ratios, together with the imposition of restriction on what interest rates can be charged and offered, the direction of credit through central directives, and other limitations on the free competitive development of the banking system, all tend to hinder the efficient long-term structural development of the financial system<sup>78</sup>.

The close affinity between central bankers and politicians, and direct political control of central banking have instigated enquiries into the political incentives underlying micro functions of the central bank in regulating the banking system. Benston<sup>79</sup> argues that the principal reason for bank regulation is taxation

<sup>76</sup>. See Hayek, F.A., " Choice in Currency: A Way to Stop Inflation ". (1976) The Institute of Economic Affairs, Occasional Paper 48, p. 16.

<sup>77</sup>. See Goodhart, C.A.E., *The Central Bank And The Financial System* , Macmillan Press Ltd, London, (1995), p. 212.

<sup>78</sup>. See Chakravarty Report quoted in Goodhart, C.A.E. *ibid.*, pp. 211-212.

<sup>79</sup>. See Benston, George J., "Does Bank Regulation Produce Stability ? Lessons from the United States " in Capie, Forrest, and Wood, Geoffrey, E. (eds. ) *Unregulated Banking : Chaos or Order?*, Macmillan, London, p. 228.



by government authorities of seigniorage<sup>80</sup>, and most banking regulation "is imposed to redistribute wealth to those with political power"<sup>81</sup>. He also submits that "with the exception of deposit insurance, most regulations [on financial services] are not useful except for those who benefit from constraints on competition"<sup>82</sup>.

The inflationary bias of government and its revenue motives in banking regulation have instigated demands for independent central bank<sup>83</sup>. A proffered solution to the inflationary bias of the government is the endowment of the central bank with a clear mandate to reach price stability<sup>84</sup>. The central bank must also be insulated from political pressure and possessed considerable discretion in the determination and operation of monetary policy. A number of measures to minimise political interference in routine central banking functions has been suggested including direct accountability of central bankers to the parliament<sup>85</sup>, specific rules guaranteeing central bank independence<sup>86</sup> and imposition of legal restraint on central bank credit to government<sup>87</sup>.

Cranston argues that limiting the central bank credit to the government "acts as a brake on the latter's budgetary policies, and encourages economic rectitude"<sup>88</sup>. Indeed, comparative studies have provided evidence of close link between the central bank's legal basis and the degree of monetary stability

<sup>80</sup>. Seigniorage means a profit made by issuing currency and claimed by the government as a prerogative.

<sup>81</sup>. Ibid., p. 229.

<sup>82</sup>. See Benston, George. J., quoted in Goodhart, C. A.E., (1995)p. 453.

<sup>83</sup>. See Cottarelli, Carlo., Limiting Central Bank Credit to the Government. Theory and Practice, IMF, Washington D.C., (1993) p. 3.

<sup>84</sup>. See Cranston, Ross., Principles of Banking Law, Clarendon Press, Oxford, (1997),pp. 125-126.

<sup>85</sup>. See Goodhart, C.A.E., (1995) op. cit p. 69.

<sup>86</sup>. Specific rules relating to the composition, appointment and duration in office of central bankers, salary, termination, and control of policy instruments.

<sup>87</sup>. See Leone, A., " Effectiveness and Implications of Limits on Central Bank Credit to the Government ", in P. Downes and R. Vaez-Zadeh (eds.), The Evolving Role of Central Banks, IMF, Washington D.C.,(1991).

<sup>88</sup>. See Cranston, op. cit., p. 130.



achieved<sup>89</sup>. There is also evidence that in some countries the average rate of inflation has been lower with an independent central bank<sup>90</sup>.

## **2.6 Politics, Law and Financial Regulation**

It has been asserted by a legal scholar that the social and economic significance of central banking statutes and banking laws, " lies in the fact that they are legal means which are employed, or are to be employed, to attain economic ends "<sup>91</sup>. This assertion which confirms the role of the bulk of financial laws as tools for economic purposes, however ignores the political ends and class interests which financial and monetary laws quite often serve.

Indeed, as Benston<sup>92</sup> eloquently contends banking laws and regulations are dominated by political redistributive considerations. The leading law and economics scholar, Richard Posner<sup>93</sup> echoes this contention by submitting that the ultimate premises of law are political. In this Posnerian thesis, "political, self-interested, traditional, habitual....."<sup>94</sup> considerations play significant roles in the content, character and formulations of laws and regulations. This thesis provides an insight into the dominance of political undercurrents in financial regulation and deregulation.

A perspective from this law and economics thesis is that it is utterly naive to perceive banking and financial statutes as public interest motivated. Rather "the interest -group theory of politics in the version revived by economists has taught us that the legislative process often caters to the redistributive desires of narrow coalitions, and in so doing, disserves any plausible conception of the public

<sup>89</sup>. See Issing, Otmar., " Central Bank Policy - Goals and Reality ", in Arestis, Philip.. (ed.) Money And Banking Issues for the Twenty-First Century, Essays in Honour of Stephen F. Frowen. Macmillan Press Ltd. (1993). 2nd ed.. p. 51.

<sup>90</sup>. See Cukierman, A.. Central Bank Strategy, Credibility and Independence : Theory and Evidence, Cambridge, Mass: MIT Press.(1992). chaps 19 - 23.

<sup>91</sup>. See Aufricht, Hans., op. cit.p.x.

<sup>92</sup>. See Benston, George. J., in Capie et al, op. cit., p. 228.

<sup>93</sup>. See Posner, Richard., Overcoming Law.(Harvard University Press, Cambridge, 1995) p. 83.

<sup>94</sup>. Ibid. p. 37.

interest"<sup>95</sup>. This thesis is corroborated by Seidman and Seidman, who reveal that in developing countries the legal orders are utilised by political leaders "not in the public but in their own interest"<sup>96</sup>. The laws in these countries augment "wealth and privilege for a few and poverty and oppression for most "<sup>97</sup>.

The roles of politics and class interests in banking laws require an understanding of the political and social configuration of the country that is the object of study. This study embraces some core political theories which have been employed by political and social scientists in their studies of Nigeria. The first set of theories is prebendalism<sup>98</sup> and clientelism<sup>99</sup>. Joseph<sup>100</sup> has employed these concepts to explain the centrality of persistent struggle to control and exploit the offices of the Nigerian state. An important point that emerges from Joseph's analysis is that all the laws of the Nigerian state including the banking and financial laws are prebendalised.

Most recently, Lewis<sup>101</sup> underscores a transition of the Nigerian state from prebendalism towards predation, the consolidation of avaricious dictatorship. This second theory of predation emphasises the abandonment of diffused clientelism and weak institutional frameworks by Nigerian governments for "more arbitrary and debilitating control by a single ruler"<sup>102</sup>. This theory is apposite to the nature of

<sup>95</sup>. Ibid. p. 400.

<sup>96</sup>. Seidman Ann and Seidman R., p. 2.

<sup>97</sup>. Ibid. p. 4.

<sup>98</sup>. Prebendalism typifies a political behaviour under which political offices are captured and utilised for the personal benefit of the office holders and their support groups.

<sup>99</sup>. Clientelism underscores the patron-client ties which underlie the relationship between the office holders and their supporters on the basis of ethnic, regional and religious identities.

<sup>100</sup>. See Joseph, Richard. A., *Democracy And Prebendal Politics in Nigeria, The rise and fall of the Second Republic*. Cambridge University Press, Cambridge,(1987), p. 1

<sup>101</sup>. See Lewis, Peter., *From Prebendalism to Predation : the Political Economy of Decline in Nigeria*, (1996) 1 *The Journal of Modern African Studies*, Vol. 34, p. 79 at p. 80.

<sup>102</sup>. Loc. cit.



financial regulation and deregulation in Nigeria because the shift into predatory politics is reflected in the banking and financial laws of the country.

Another political concept of interest is the demonstration of the elitist role in the promotion of state interventionism in economic activities including the banking sector as a mechanism for generating economic power through political power. This elitism is reflected in financial and banking laws with predominant orientation towards regulatory interventionism. However, this elite role has its own contradiction since the wealth, status, power, and patronage attributable to state interventionism instigated intense struggle for power with attendant political and legal instability<sup>103</sup>. Nigerian financial laws and structures reflect these contradictions and instability.

## **2.7 Financial Regulation and Regulatory Interventionism: Theoretical Underpinnings**

The importance of the banking system as the bedrock of the total economy has made it particularly susceptible to actions of governmental authorities "in the form of laws, decrees, regulations and by more direct participation, such as government ownership"<sup>104</sup>. Cameron<sup>105</sup> laments that no other sector of the economy except foreign trade had been subject of massive intervention like the banking system. He characterises the intervention as "so broadly, so consistently, and with such telling effect -usually bad"<sup>106</sup>.

The original policy underpinning the regulation of the banking system was financial restriction<sup>107</sup>. The kernel of financial restriction is the encouragement of financial

<sup>103</sup>. Loc. cit.

<sup>104</sup>. See Cameron, R. (ed.), *Banking And Economic Development : Some Lessons of History*. Oxford University Press, Inc., U.S.A., (1972), p.8.

<sup>105</sup>. Loc. cit.

<sup>106</sup>. Loc. cit.

<sup>107</sup>. See Fry, Maxwell. J. , *Money, Interest, And Banking In Economic Development*, The John Hopkins



institutions and financial instruments from which government can extract enormous seigniorage, while discouraging the emergence of private bond and equity market since seigniorage cannot be easily expropriated from these markets<sup>108</sup>.

Financial regulation which restricts market forces has not emerged from a vacuum. It has been influenced by a panoply of economic and monetary precepts which have played large roles in framing financial regulation<sup>109</sup>. The banking laws and regulations are merely the mechanisms for transmitting monetary axioms into legal and regulatory norms since financial regulatory measures on the banking system are "normally effected through legislation and regulations "<sup>110</sup>.

It is therefore important to examine the economic precepts which underline the banking regulation and deregulation. These economic theories provide the analytical tools for scrutinising financial regulations and assessing their economic consequences. Indeed, Veljanovski<sup>111</sup> contends that an efficient system of regulation could only be devised by first obtaining a thorough knowledge of the financial market and its economic purpose and effects.

This study discusses the major influential theories but focuses on the Mckinnon-Shaw hypothesis as its main tool of analysis. This hypothesis is relevant to the Nigerian situation since the country has undergone regulatory changes based on its precepts. The Nigerian financial system also encapsulates the contradictions in the implementation of the Mckinnon-Shaw theoretical prognoses.

University Press, Baltimore and London ,(1991), p. 14.

<sup>108</sup>. See Fry (1991). Ibid..

<sup>109</sup>. See Veljanovski, Cento., " Introduction ", in Charles Goodhart, John Kay, Kate Mortimer, and Andrew Duguid., *Financial Regulation or Over-Regulation?*, (The Institute of Economic Affairs, London, 1988) p. 7.

<sup>110</sup>. See Adeniji, A. O., " Recent Development in the Legislation And Regulations Governing the Establishments and Administration Of Banks In Nigeria " in *Advanced Law and Practice Of Banking In Nigeria*, (Financial Institutions Training Centre, Yaba, Lagos, Nigeria, 1991), p. 41.

<sup>111</sup>. See Veljanovski, C., op.cit. p. 7.

### 2.7.1 Classical theories of Regulatory Interventionism

The traditional / conventional monetary linchpin of financial regulatory intervention has been variously characterised as neo- classical, neo - keynesian, wealth view, wealth view keynesian or monetarist<sup>112</sup>. All these conventional thoughts have been categorised as classical theories of regulatory interventionism in this work as a convenient tag for a broad representation of their common theoretical tenor.

These classical theories are traceable to the influential works of eminent economists such as Lord Keynes<sup>113</sup>, James Tobin<sup>114</sup>, Harry Johnson<sup>115</sup>, Robert Mundell<sup>116</sup>, and Levarhi and Patinkin<sup>117</sup>. Although, there are patent differences of opinions among the scholars, a common theme of regulatory restriction of financial and monetary operations is discernible.

The central plank of the classical monetary philosophy is the substitutability of money and capital in the portfolios of wealthholders. According to the thesis, economic groups like households allocate their wealth between money and productive capital assets. Where the return on capital is higher relative to money, the ratio of capital to money in

<sup>112</sup>. See Shaw, Edward. S.. *Financial Deepening in Economic Development*, Oxford University Press, New York, London.(1973), chapter 2 ; see also Mckinnon, Ronald. I. , *Money And Capital in Economic Development*, The Brookings Institution ,Washington, D.C..(1973), chapter 5.

<sup>113</sup>. See Keynes. J. Maynard, *The General Theory of Employment Interest and Money*, London: Macmillan,(1936); see also Keynes. J . Maynard, *A Treatise on Money*, London : Macmillan.(1930).

<sup>114</sup>. See Tobin. James. " Money and Economic Growth ",(1965) 33 (4) *Econometrica*, pp.671 -684. (October), see also Tobin. James, " On the Efficiency of the Financial System ", (1984) 153 *Lloyds Bank Review* .pp.1-15. (July ).

<sup>115</sup>. See Johnson, Harry. G. , " Money in a Neo-Classical Growth Model ", in *Essays in Monetary Economics*, Harvard University Press, Cambridge: Mass:(1967). pp.143-178.

<sup>116</sup>. See Mundell. Robert. A. . " Growth, Stability, and Inflationary Finance ",(1965) 73 (2) *Journal of Political Economy*, pp. 97-109. (April).

<sup>117</sup>. See Levhari. David and Don Patinkin . " The Role of Money in a Simple Growth Model ",(1968) 58 (3) *American Economic Review*, pp.713-753. (September).



household portfolio will be larger. Thus, there will be higher capital / labour ratio, higher productivity, increased per capital income, and accelerated economic growth. The converse is represented as a truism. Hence, a higher return on money relative to capital will induce greater demand for real cash balances in the portfolio of wealthholders and discourage investment in productive capital. In the circumstances, Tobin advocates reducing the return on money to increase welfare.

This view also justifies the existence of inflation as a mean of promoting new investment since continuous price inflation reduces the perceived yields on money to induce private wealthholders to acquire real assets instead of cash balances . It also condones the extraction of inflation tax by the governments so that the proceeds can be utilised for real capital formation<sup>118</sup>.

The academic expositions of these schools provide the intellectual bases for some restrictive regulatory measures<sup>119</sup> like interest rate ceilings, variable reserve requirements, and compulsory holdings of government bonds that are the main thrust of financial regulation in both developed and developing countries<sup>120</sup>.

The traditional prescriptions of the classical theories of regulatory interventionism however encountered a formidable challenge from a new vista in the theories on money and finance pioneered separately by Edward Shaw and Ronald Mckinnon. The Mckinnon-

<sup>118</sup>. See Robert C. Vogel. , and Stephen A. Buser. . "Inflation, Financial Repression, and Capital Formation in Latin America " in Ronald I. Mckinnon, (ed.). *Money And Finance In Economic Growth And Development : Essays in Honor of Edward S. Shaw.* , Marcel Dekker, INC. New York and Basel 1976) p.35. See Mckinnon, Ronald. I. , " Introduction " in Ronald .I. Mckinnon, (ed.) (1976) op. cit.,pp.1-2.

<sup>119</sup>. See Keynes, Maynard. J. , *A Tract on Monetary Reform*, 1st ed., 1923. (Volume IV of *The Collected Writings of J. M. Keynes*, Macmillan, New York; 1971).In the words of Keynes, " A government can live for a long time , even the German government or the Russian government, by printing money..... It is the form of taxation which the public finds hardest to evade and even the weakest government can enforce, when it can enforce nothing else ".

<sup>120</sup>. See Fry (1991), op. cit., pp.6 & 14.



Shaw model usually called the 'financial repression'<sup>121</sup> hypothesis' is labelled in this work as the developmental theory of regulatory repressionism because it underscores the negative effects of regulatory interventionism in financial sector particularly banking, on the economic development of a nation. It has a broader and generalised conception of the impact of financial regulation, and is rooted in a developmental philosophy with a special relevance to the developing countries.

## **2.8 From Financial Regulation to Financial Repression : An Analysis of the Developmental Theory of Regulatory Repressionism.**

The sporadic regulatory intervention in financial markets spurred by the classical theories of regulatory interventionism propelled many developing countries to slip into financial repression<sup>122</sup>. Financial repression<sup>123</sup> is described as the indiscriminate distortions of financial prices including interest rates and foreign - exchange rates that reduce the real rate of growth and the real size of the financial system relative to non financial magnitudes. Since financial regulation is the mechanism for transmitting financial repression into reality, then financial repression is usually regulatory repression<sup>124</sup> per se . Hence the term regulatory repression features prominently in this thesis to underscore the regulatory dimension of this discourse and highlight the role of financial regulation as the main conduit pipe of financial repression.

Professor Mckinnon<sup>125</sup> characterises financial repression as a phenomenon whereby bank credits are allocated to entrenched and vested interests and activities like

<sup>121</sup>. The term financial repression refers to the constraints on investment caused by the rationing of credit, usually to a few large borrowers, in financial markets where interest rates and hence the supply of savings are below market-clearing levels.

<sup>122</sup>. See Fry (1991), op. cit., p. 14.

<sup>123</sup>. Ibid., p.13.

<sup>124</sup>. The term regulatory repression features prominently in this work to underscore the regulatory dimension of this thesis and highlight the role of legislation and regulations as the main conduit pipes of financial repression.

<sup>125</sup>. See Mckinnon (1973), op cit., pp.68-69.

licensed import activities, large scale mineral exports, protected industries, multinational corporations, and public companies, while the financing of the other sectors must depend on the meagre resources of the informal markets. Professor Shaw's prognosis for an economy marked by financial repression is grave retardation of its development process<sup>126</sup>.

The deterioration from financial regulation or restriction into financial repression<sup>127</sup> is attributed to the egregious assumptions<sup>128</sup> which formed the basis of the theoretical influences of financial regulation superimposed or imported by most developing countries. Edward Shaw<sup>129</sup> in his celebrated text 'Financial Deepening in Economic Development' demonstrates that the conditions in developing countries are antithetical to those assumed in the classical theories called wealth view and wealth Keynesian view<sup>130</sup>. Money is posited as risky and costly, and governmental intervention is pervasive<sup>131</sup>. Shaw describes the economies with these symptoms of market segmentation as 'lagging economies'<sup>132</sup>, while for Mckinnon they are labelled 'fragmented economies'<sup>133</sup>.

Mckinnon and Shaw proffer a new hypothesis to explain the nexus of money and capital to economic prosperity in developing countries. The Mckinnon-Shaw hypothesis rejected the conventional axiom that money and capital are substitutes in the portfolios of

<sup>126</sup>. See Shaw op. cit, pp.3-4.

<sup>127</sup>. See Fry (1991). op. cit, p.7.

<sup>128</sup>. The classical and keynesian thoughts are anchored on a number of basic assumptions such as perfect foresight, perfect mobility, perfect information, availability of best technology, homogeneous output, and existence of competition. These schools of thought further assume that money is riskless and costless. See Shaw, op. cit, chapters 2 & 3 and in particular p.61.

<sup>129</sup>. See Shaw, op.cit. p.49.

<sup>130</sup>. The shavian thesis portrays the economic environment in developing countries as marked by expensive and imperfect information, imperfect foresight, differentiated and non competitive prices, fragmented capital market, slow and expensive technology, and grave instability.

<sup>131</sup>. Ibid., chapter 3.

<sup>132</sup>. Ibid., p.48.

<sup>133</sup>. See Mckinnon (1973). op.cit., p.5.



private wealth holders. They enunciate the thesis that money and capital are complements in less developed fragmented economies<sup>134</sup>.

In his classic entitled *Money and Capital in Economic development*, Mckinnon<sup>135</sup> considers the additional assets to money and capital such as unfinished inventories called inflation hedges. He hypothesises that self finance dominates the method of capital formation in fragmented economies, and maintains that under such regime of self finance the prior accumulation of stocks of money and / or inflation hedges is an essential condition ex ante for new investment whenever the scale of an investment project exceeds the resources accruing from the present income. Mckinnon<sup>136</sup> concludes that there is a strong complementarity <sup>137</sup> between money and capital, with strong substitutability between money and inflation hedges.

The renowned economist further argues that other goods can substitute for money as a store of value or as an inflation hedge, and if the real return on holding money is low or negative a significant portion of the physical capital of the economy will consist of such inventories of finished and semi finished goods which are not directly productive or consumable<sup>138</sup>.

<sup>134</sup>. See Sikorski, Trevor. M., *Financial Liberalization in Developing Countries*. Edward Elgar, Cheltenham, UK, Brookfield, US,(1996). pp. 66-69.

<sup>135</sup>. See Mckinnon (1973), op. cit., chapter 6.

<sup>136</sup>. See Robert C. Vogel and Stephen A. Buser, op.cit., p.36.

<sup>137</sup>. Professor Mckinnon further opines " (T)his complementarity works both ways : the condition of money supply have a first - order impact on decision to save and invest unlike the neoclassical model. In particular, if the real return on holding money increases,so will self-financed investment over a significant range of investment opportunities. The increased desirability of holding cash balances reduces the opportunity cost of saving internally for the eventual purchase of capital goods from outside the firm-household. The financial "conduit " for capital accumulation is thereby enlarged "see Mckinnon (1973), op .cit., p. 60.

<sup>138</sup>. Ibid., p.63.



Mckinnon's intellectual collaborator and progenitor, Edward Shaw states<sup>139</sup> the virtues of money as numerare<sup>140</sup>, means of payment and store of value. In his words, "(A)ccumulation of money is one form of saving . It is a substitute for saving through self-finance of physical investment, purchase of primary securities or acquisition of non-monetary indirect financial assets "<sup>141</sup>. At the heart of the Mckinnon-Shaw model lies the indispensability of money. For Mckinnon, " it is clear .... that money is important "<sup>142</sup> and Shaw says " Finance matters "<sup>143</sup>. Contrary to the wealth view, where the financial system serves no purpose, a crucial role is identified for financial institutions in the Mckinnon-Shaw model to break the confines of self-finance and pool savings more efficiently<sup>144</sup>. Thus, Mckinnon-Shaw model advocates greater roles for the financial institutions for the purposes of savings mobilisation, financial intermediation and allocation.

The all purpose implication of the Mckinnon-Shaw model for financial regulation is the revelation of traditional philosophy of low returns on money embodied in interest rate ceilings or regulation as baseless, counterfactual, and perilous at least in the environment of the developing countries. The model finds no reason for the discouragement of money holding in the portfolio of wealth holders, and advocates a uniformly high real interest rate on financial assets and high real yields on physical assets as sine qua non of a successful development policy<sup>145</sup>. Under the model, the capital market can operate at optimum

<sup>139</sup>. See Shaw, op.cit., chapter 3.

<sup>140</sup>. This depict the fact that money can be counted.

<sup>141</sup>. See Shaw, ibid., p. 61.

<sup>142</sup>. See Mckinnon (1973). op.cit. p.67.

<sup>143</sup>. See Shaw, op.cit. p.79.

<sup>144</sup>. See Mckinnon (1973). op.cit. p.65.

<sup>145</sup>. See Mckinnon (1976). op.cit. p.3.

efficiency only if the monetary system was fully deployed as a financial intermediary between savers and investors<sup>146</sup>.

The Mckinnon-Shaw hypothesis also provides a schema articulating most vividly the negative impacts of specific measures of regulatory intervention masquerading as financial regulation. The regulatory measures are characterised as instruments of financial repression<sup>147</sup>. Mckinnon places the lacklustre performance of the organised bank lending in most developing countries at the doorstep of "regulated interest ceilings and collateral requirements"<sup>148</sup>.

Interest rate regulation which ensures low return on real cash balances through a floor on deposit rate and cap on loan rate is demonstrated as injurious to capital accumulation. A low deposit interest rate discourages savings by depositors through negative rewards, and encourages consumption or direct investment in lower yielding ventures rather than bank savings<sup>149</sup>. Negative deposit interest rates are also described as penalty on depositors for substituting indirect financial assets against other forms of asset or consumption<sup>150</sup>.

Low and negative loan rates provide cheap credit to large borrowers, politicians and big corporations at a great cost to the larger society<sup>151</sup>. The low lending rates invariably precipitate credit rationing since there will be large army of borrowers that the banks cannot satisfy. The allocation of credit becomes dependent not on the quality and

<sup>146</sup>. Ibid., p.2

<sup>147</sup>. See Mckinnon, Ronald. I., *The Order Of Economic Liberalization*. The Johns Hopkins University Press, Baltimore and London.(1991). p.43.

<sup>148</sup>. See Mckinnon (1973 ). *op.cit.*,p.69.

<sup>149</sup>. See Cole, David. C., and Hugh T. Patrick.. " Financial Development in the Pacific Basin Market Economics " in Augustine H.H.Tan and Basant Kapur. (eds.). *Pacific Growth and Financial Interdependence*. Sydney: Allen and Unwin.(1986). p.38.

<sup>150</sup>. See Shaw. *op.cit.* p.83.

<sup>151</sup>. Ibid., p.86.

productivity of investment, but on mundane issues like political connection, name, loan size, reputation, and personal friendship<sup>152</sup>. Credit rationing is also "vulnerable to corruption and conspiracy in dividing between borrowers and officers of the intermediary the monopoly rent that arises from the difference between low, regulated loan rate and the market-clearing rate"<sup>153</sup>. Low lending rates also create risk aversion by banks<sup>154</sup> and intensify unemployment<sup>155</sup>.

The imposition of reserve requirements on financial intermediaries is also characterised as extortionist. A high and uniform reserve requirement against all deposits appropriates a share of the funds flowing from depositors for lending by the monetary authority and siphons potential loanable funds out of the commercial loan market<sup>156</sup>. It contracts the volume of credits available for bank lending<sup>157</sup> and in the absence of official interest ceilings, induce banks to lower deposit rates and raise loan rates. The imposition of high reserve requirements also propels most financial intermediaries to buy low- interest government bonds and thereby become captive lenders to the government and public corporations<sup>158</sup>.

<sup>152</sup>. See Fry (1991), op .cit. p.18.

<sup>153</sup>. See Shaw, op.cit, p.86.

<sup>154</sup>. Low lending rates also create risk aversion tendencies because the banks only lend to established borrowers and new investments are stifled without necessary financing. See also Cho, Yoon. Je., "Inefficiencies from Financial Liberalization in the absence of Well-Functioning Equity Markets" (1986 ) 18 (2) Journal of Money, Credit, and Banking. pp. 191- 199. (May).

<sup>155</sup>. Excessive investment in capital intensive projects at the expense of abundant labour is also attributed to the ability of some borrowers to obtain funds at low loan rates which induce wastes. Thus, the low rates intensify unemployment. See Shaw, op. cit. p.86.

<sup>156</sup>. See Mckinnon (1991), op. cit., p.49.

<sup>157</sup>. See Mckinnon (1991), Ibid., pp.49-50.

<sup>158</sup>. See Fry , Maxwell. J., "The Fiscal Abuse of Central Banks ", ( 1993C ) Mimeo : University of Birmingham. See further Cole and Patrick, op.cit., p.38.



Selective or directed credit which is a standard regulatory stipulation directing or compelling banks and financial institutions to make priority loans at very low lending rates to specific sectors or individuals in the economy is demonstrated as financially repressive. Under such regulation or direction, credits are allocated to unworthy projects and objective assessment of economic viability is subjugated to political considerations<sup>159</sup>. Selective credits are usually complemented by low loan rates set to provide real subsidies to favoured borrowers, thereby penalising depositors with low returns on their savings. Hence, the subsidised loan rate is represented as "repression at its worst"<sup>160</sup>. The proliferation of import dependent industries and projects that are wasteful of foreign exchange has been attributed to selective or directed credit<sup>161</sup>.

The McKinnon- Shaw hypothesis underscores the role of an overvalued domestic currency in contaminating the domestic financial process. An overvalued domestic currency makes the foreign financial assets attractive by undervaluing them, and the high deposit rates normally paid on such foreign financial assets are enough temptation for savers to evade domestic regulation and transfer their deposits abroad. This tendency causes capital flight whereby domestic savings are exported abroad. Shaw observes that "(C)apital flight away from domestic asset markets, where yields are depressed by ceilings, and around an overvalued exchange rate to foreign markets is an expensive result of the statute and custom and moral law that tell excess demand for savings to behave itself and vanish. Needless to say, the borrowers hurt most by capital flight are the poor and weak"<sup>162</sup>.

<sup>159</sup>. See Fry (1991), *op. cit.*, pp.398 & 417. see also Fry (1993B), *op. cit.*

<sup>160</sup>. See Shaw, *op. cit.*, p.87.

<sup>161</sup>. *ibid.*

<sup>162</sup>. See Shaw, *op. cit.*, p.94.

The hypothesis analyses the inflationary effect of government deficit financing from the central bank when high reserve requirements are already imposed on the banks, and the attendant difficulty of monetary control. According to Mckinnon, the resulting price inflation "reduces real rates of interest perceived by potential depositors (savers). Realised private financial saving falls contracting the flow of loanable funds and reducing productive investment and possibly employment "<sup>163</sup>. The role of charter policy and regulation on entry and exit in discouraging competition among banks and other financial institutions also receives attention in the model<sup>164</sup>. The hypothesis surmises that under the aegis of the central bank, the banks exploited their oligopolistic position by returning attractive profits through wide rate spreads while maintaining high unit cost<sup>165</sup>.

One can safely assert that the Mckinnon- Shaw framework is a path breaking approach from the prevailing orthodoxy, providing a refreshing insight into the role of perverse financial regulatory measures in the economic adversity of the less developing countries. Its basic assumptions have close affinity with the realities symptomatic of the developing economies like Nigeria, and the breathtaking demonstration of the nexus between financial repression and underdevelopment is vivid. The developmental theory of regulatory repression helps to unravel the phenomena of low interest rate, credit ceilings, capital flight, government borrowings, and ownership restrictions in Nigerian banking system. The analysis of the impact of financial regulation on banking sector has been considered in different intellectual context aside from the financial repression hypothesis.

<sup>163</sup>. See Mckinnon (1991). op. cit., p. 48.

<sup>164</sup>. See Shaw, op. cit., p. 88.

<sup>165</sup>. Finally, the Mckinnon-Shaw hypothesis remarkably demonstrates the consequences of the repression of the formal market on the equally repressed informal market. The burgeoning, tenacity, and ubiquity of informal market is a reflection of the unsatisfactory state of the formal market. The informal market provides a meeting venue for the disgruntled savers who abhor negative real deposit rates and the rejected borrowers rationed out of the cheap credits in the organised market. see Shaw, op. cit., p. 89; see further Shahin, W., " Unorganised Markets and Monetary Policy Instruments " ( 1990 ) 18 ( 2 ) World Development, pp. 325-332.



Although both perspectives have a conterminous object of study, the intellectual approaches differ<sup>166</sup>.

## 2.9 The Concept of Financial Liberalisation and Deregulation

The strategy of financial liberalisation emphasises the withdrawal of unwise public intervention from financial market<sup>167</sup>. The concept postulates the loosening of the Gordian knot of regulatory interventionism, and the substitution of the supremacy of bureaucrats with the hegemony of the market in the financial sector<sup>168</sup>. It is predicated on the axiom that "government failure" as indicated by its regulatory mishap was best combated by removing the government.

Financial liberalisation is often posited as the removal in their totality of government controls and regulations of the financial system. This is a misconception. Indeed, as Mckinnon states " successful liberalisation is not simply a question of removing all regulations " <sup>169</sup>and financial liberalisation requires stronger rather than weaker prudential regulation<sup>170</sup>. Financial deregulation did not prescribe a complete removal of all types of regulations. Rather, it enunciates a core of prudential regulations that are prerequisites to a liberalised or deregulated banking system and, in a sense, deregulation may actually signify reregulation which indicates the introduction of essential rules.

<sup>166</sup>. Perhaps, a segmentation of the two approaches can be neatly undertaken by characterising the present approach as ' pure theory of regulatory repressionism '. The pure theory in much the same vein as its developmental counterpart has a tremendous relevance and utility for this discourse. It is a significant academic input to the understanding of the impact of financial regulation. see Rae Wesson, *Domestic and Multinational Banking : The Effects of Monetary Policy* , (London, Croom Helm Ltd, 1980), p. 65. see Black , Fischer. , "Bank Funds Management in an Efficient Market ", (1975) 2 *Journal of Financial Economics*, pp. 338-339. See Black, Fischer., " Banking and Interest Rates in a World Without Money ", (1970) *Journal of Bank Research*, (Summer).

<sup>167</sup>. See Mckinnon (1973). op.cit., p.8.

<sup>168</sup>. See Shaw, op.cit., p.12.

<sup>169</sup>. See Mckinnon, R.I. " Issues and Perspectives : An Overview of Banking Regulation and Monetary Control ", in Tan and Kapur (eds.) op. cit., p. 326.

<sup>170</sup>. See Long ( 1983 ), op. cit., p.41.



The key components of financial liberalisation consist of interest rate deregulation, refinement of reserve requirements, abolition of selective or directed credit, privatisation of commercial banks and correct pricing of the currency exchange rates<sup>171</sup>. It equally signifies the regulatory shift from direct forms of financial regulation to the indirect or traditional forms of financial regulation. The other elements of financial liberalisation include the promotion of competitive banking with entry and exit rules, liberalising the curb or informal financial market, redirection or abolition of development finance institutions especially the special banks, and desegmentation of banking operations<sup>172</sup>. The list is not exhaustive since the degree of regulatory repression varies from country to country. However, the identified elements are treated as the salient features of financial liberalisation.

Interest rate deregulation is the conventional way of financial liberalisation<sup>173</sup>. It prescribes the removal of ceilings on interest rate so that both the deposit and loan rates can gravitate towards their free-market equilibrium levels. The interest rate structure should apply *mutatis mutandis* to the government and the private sector. Fry posits that "if the government is unwilling to compete in this way, financial development is doomed"<sup>174</sup>.

The liberalisation theme also includes the eradication of selective credit and subsidised interest rates. It has been contended that where a government is too weak to eliminate selective credit, it would be incapable of implementing sound macroeconomic

171. See in particular Mckinnon (1991), *op. cit.*, p.12.. see generally Shaw, *op. cit.*, chapter5., Mckinnon (1973), *op. cit.*, chapters 8,10 &11; and Fry (1991), *op. cit.*, chapters 11 & 17.

172. Ibid.,

173. See Kanhaya L. Gupta and Robert Lensink, *Financial Liberalization & Investment* , London & New York : Routledge,(1996). p. 6.

174. See Fry (1991), *op. cit.* p. 436.

policy<sup>175</sup>. A fundamental component of the strategy of financial liberalisation is getting the exchange rate right. Mckinnon<sup>176</sup> recommends a downward crawling exchange rate after the initial devaluation of overvalued currency. A large dose of devaluation is undesirable.

Financial deregulation also signifies the promotion of competition in the banking industry through a liberal charter policy of entry and exit. The restriction of entry is castigated as the cause of technological backwardness and oligopolistic tendencies of banking system, and a recipe for non price competition such as construction of marble buildings<sup>177</sup> as symbols of market power and profitability. A competitive banking ensures the existence of a relatively small spread between loan rates and deposit rates on short term obligations and creates an atmosphere in which superior technology wins.

It is usual that the desegmentation of banking activities forms a core aspect of a financial liberalisation programme. The purpose of desegmentation is the improvement of the operational and dynamic efficiency by liberating banks from the regulatory yoke of prohibited activities that make the banks operationally rigid, uncompetitive and unresponsive to environmental changes<sup>178</sup>. The desegmentation agenda has a tendency towards German concept of universal banking, and has been advocated by the World Bank<sup>179</sup>, Khatkhate and Riechel<sup>180</sup>, Fry<sup>181</sup> and Virmani<sup>182</sup>.

<sup>175</sup>. Ibid., p. 437.

<sup>176</sup>. See Mckinnon (1991). op .cit, p.78.

<sup>177</sup>. See Mckinnon (1973), op. cit ,p. 84.

<sup>178</sup>. Under the mechanism of financial deregulation through desegmentation, banks would be capable of undertaking financial activities like investment banking, trust management, securities dealing, mortgages, insurance, finance consultancy, and equity ownership in non-bank subsidiaries. The diversification of banking operations will enable banks to compete with the other financial intermediaries that have encroached on banking activities .

<sup>179</sup>. See World Bank , The Philippines : Aspects of the Financial Sector, Washington, D.C.: World Bank, May,(1980), p. 74.

<sup>180</sup>. See Khatkhate, Deena. R. and Klaus-Walter Riechel . " Multipurpose Banking : Its Nature,



It is of interest to note that the desegmentation of banking did not feature in the McKinnon-Shaw hypothesis, and McKinnon<sup>183</sup> is in fact supportive of the restriction of banking activities in the US Glass - Steagall fashion. The major criticisms of desegmentation in developing countries have been identified as the accentuation of commercial and financial monopoly through the interlocking ownership of corporate and bank interests, and the aggravation of financial fragility of the banks through imprudent debt exposures<sup>184</sup>.

A pivotal role is accorded privatisation of commercial banks in the menu of liberalisation options. It is believed that private ownership of the banking sector will free most public owned banks of political interference and control of management, bureaucratic inertia, corruption, patrimonialism, undercapitalisation and gross inefficiency.

Financial liberalisation attains its ascendancy in policy reforms due to the multifarious positive effects ascribed to its implementation. Interest rate deregulation which increases the return on deposits has its effect in the rising propensity to save since "saving behaviour is not insensitive to the reward for saving "<sup>185</sup>. This facilitates the effective mobilisation of domestic resources. An attractive rate of return prevents substitution into consumption or other inflation hedges<sup>186</sup>.

Scope and Relevance for Less Developed Countries ". (1980) 27 (3) IMF Staff Papers, pp. 478-516 (September).

181. See Fry (1991). op. cit, pp.440 &441.

182. See Virmani, Arvind, " Government Policy and the Development of Financial Markets : The Case of Korea ". (Washington, D. C. : World Bank Staff Working Paper No.747, August, 1985).

183. See McKinnon (1986), in Tan and Kapur (eds.). op. cit.,p. 335.

184. See Diaz - Alejandro, Carlos. , " Good - Bye Financial Repression, Hello Financial Crash " (1985) 19 (1 - 2) Journal of Development Economics, pp.1 -24. see also Velasco, Andres," Liberalization, Crisis , Intervention : The Chilean Financial System, 1975 -1985 ", Washington D.C. : IMF, Central Banking Department. (December 1986), p.11.

185. See Shaw, op. cit., p. 78.

186. See Fry (1991). op. cit., pp. 154 &433. see also Okuda, H. " Financial Factors in Economic



The elimination of selective and subsidised credits reduces the flow of cheap credits to the affluent persons, and where this is coupled with abolition of import licences, the rents accruing to this class of persons are effectively curtailed<sup>187</sup>. The effect of these liberalising techniques is a reduction in the income inequality gap between the rich and poor members of the society. The abolition or refinement of reserve requirements increases the volume of deposits that the banks can lend to borrowers<sup>188</sup>, while the privatisation or denationalisation of the banks and a competitive charter policy ensure the operational efficiency of the banking system<sup>189</sup>

Ultimately, financial liberalisation yields a saving, income, investment, employment and distributive effects. Shaw has however warned that "It is not our theme that only financial liberalisation matters. On the contrary, financial liberalisation is appropriately linked with complementary measures that reach beyond the financial sector"<sup>190</sup>. Hence, certain prerequisites of financial liberalisation must be considered .

Macroeconomic stability has been identified as a vital ingredient for successful liberalisation<sup>191</sup>. Fiscal reforms through the elimination of budget deficits, unproductive public borrowing , deficit financing, and the improvement of tax collection system are postulated as crucial factors<sup>192</sup>. The proponents of financial liberalisation advocate the

Development : A Study of Financial Liberalization Policy in the Philippines ". (1990)  
28 (3) The Developing Economies, pp240-270.

187. See further Fry (1991), op. cit., p. 436.

188. See Mckinnon (1991), op. cit., pp. 48 -65.

189. See Fry (1991), op. cit., p. 312.

190. See Shaw, op. cit., p. 4.

191. There must be low inflation with an appreciable price stability for financial Liberalization to attain its ends. " High and variable inflation destroys existing financial markets and prevents potential financial markets from developing ". see Fry (1991), op. cit., p. 425.

192. See Hanson, J. A. and Craig R. Neal , "Interest Rate Policies in Selected Developing Countries, 1970 -1982 " (Washington, D.C. : World Bank Staff Working Paper No.753.

liberalisation of current account to stimulate trade and export, but recommend retention or imposition of restriction on capital accounts<sup>193</sup> .

The potency of financial liberalisation as a policy panacea for the developmental ailments of developing countries has however been jolted by the financial crises which were the aftermath of the implementation of financial liberalisation in some countries especially the Latin American countries of Chile, Brazil, Argentina, Uruguay<sup>194</sup> and South East Asia. These developments foist a refinement and rethinking of the paradigms of financial liberalisation on its progenitors and proponents. One of the first reactions was to define the limits on the speed of financial liberalisation. The appropriate sequencing of the monetary, fiscal, and foreign exchange policies is posited as a major determinant of the success of the liberalisation adventure. " Governments cannot, and perhaps should not, undertake all liberalising measures simultaneously " <sup>195</sup>. David Cole<sup>196</sup> sketches the differences in the individual postulations of Mckinnon and Shaw, and advocates the

1985), p. 35. See also Mckinnon (1991), op.cit, p.112.

<sup>193</sup>. Capital account is the portion of a country's balance of payments that shows the volume of private foreign investment and public grants and loans that flow into and out of a country over a given period, usually one year. Mckinnon prescribes the imposition of restriction on capital inflow either loans or credit, and to some extent the purchase of domestic assets by foreigners. The necessity of a consistent monetary and exchange rate policies is underscored, and the adoption of a crawling peg or a freely floating exchange rate is advocated. see Mckinnon (1973), op. cit., p. 160, and Mckinnon (1991), op. cit., pp.104 & 117.

<sup>194</sup>. See Diaz - Alejandro (1985), op.cit.; Velasco, op. cit.; and Mckinnon (1982 ), op. cit.,

<sup>195</sup>. See Mckinnon (1991), op. cit, p. 4. Mckinnon enunciates the optimum order of economic liberalisation as first, the institution of fiscal control which must precede financial liberalisation. Second, is the prescription of the opening of the domestic capital market with real interest rates on deposits and loans. The third order is the pace of liberalisation of the foreign exchanges. Current account is recommended to be liberalised prior to capital account . The liberalization of the capital account is the last stage in the optimum order of economic liberalization. A premature deregulation of exchange controls on foreign capital movement may result in unwarranted capital flight and massive foreign debts.

<sup>196</sup>. See David Cole. " Concepts, Causes, and Cures of Instability in Less Developed Countries " in Mckinnon (1976), op. cit., pp.143-171.



payment of interest on demand deposits. Lewis Spellman<sup>197</sup> concurs with the hypothesis that a lower deposit rate result in a state of under capitalisation of the economy.

Most recently, additional testing and elucidation of the hypothesis have been undertaken by an array of scholars including Vicente Galbis<sup>198</sup>, Donald Mathieson<sup>199</sup>, Paul Krugman<sup>200</sup>, Basant Kapur<sup>201</sup>, and Maxwell Fry<sup>202</sup>. Sebastian Edwards<sup>203</sup> suggests the

<sup>197</sup>. See Spellman, Lewis. J., "Economic Growth and Financial Intermediation" in Mckinnon (1976) op. cit., pp. 11-22.

<sup>198</sup>. See Galbis, Vicente., "Financial Intermediation and Economic Growth in Less- Developed Countries : A Theoretical Approach ", (1977) 13 (2) Journal of Development Studies, pp.58-72. (January). see also the following articles by the same author viz. : "Analytical Aspects of Interest Rate Policies in Less-Developed Countries " (1982) 6 (2) Savings and Development, pp.111-165. and "Financial Sector Liberalization under Oligopolistic Conditions and a Banking Holding Company Structure " (1986) 10 (2) Savings and Development, pp.117-141.

<sup>199</sup>. Mathieson, Donald. J., "Financial Reform and Stabilization Policy in a Developing Economy ", (1980) 7 (3) Journal of Development Economics, pp.359-395. (September) . see also the following articles by the same author viz. : "Financial Reform and Capital Flows in a Developing Economy ", (1979) 26 (3) IMF Staff Papers, pp.450-489; and "Exchange Rate Arrangements and Monetary Policy " (1989) Finance and Development, pp. 21-24.

<sup>200</sup>. See Krugman, Paul., "Interest Rate Ceilings, Efficiency, and Growth: A Theoretical Approach" (New Haven : Yale University, Department of Economics, 1978 ).

<sup>201</sup>. See Kapur, Basant. K., "Alternative Stabilization Policies for Less-Developed Economies " (1976) 84 (4 ) Journal of Political Economy, pp. 777-795. (August). see further the following articles and treatise by the same author viz. : "Two Approaches to Ending Inflation ", in Mckinnon (1976). op. cit; "Inflation and Financial Deepening" ( 1989 ) 38 Journal of Development Economics, pp. 379-396.

<sup>202</sup>. See Fry, Maxwell. J., ( 1988 &1991. 1993A, 1993B, and 1993C ), op. cit... see also the following articles by the same author viz. : "A Note on Some Aspects of Money and Capital Markets in Lowest Income Countries ", ( 1976 ) 4 ( 3 ) Bangladesh Development Studies, pp. 399-404. (July); "Pitfalls in Partial Adoption of the Mckinnon-Shaw Development Strategy : The Nepalese Experience ", ( 1978 ) 6 ( 3 ) Bangladesh Development Studies, pp.257-270; "Money and Capital or Financial Deepening in Economic Development?" ( 1978 ) 10 ( 4 ) Journal of Money, Credit and Banking, pp. 464-475; "The Cost of Financial Repression in Turkey ", ( 1979 ) 3 ( 2 ) Savings and Development, pp. 127-135; "Saving, Investment, Growth and the Cost of Financial Repression " ( 1980 ) 8 ( 4 ) World Development, pp. 317-327; "Financial Structure, Financial Regulation, and Financial Reform in the Philippines and Thailand, 1960-1984 ", in Cheng ( ed. ), Financial Policy and Reform in Pacific-Basin Countries, ( New York, Lexington Books, 1986 ). pp. 160-183; "Neo-Classical and Neo-Structuralist Models of Financial Development : Theories and Evidence ", ( 1987 ) 9 ( 1 ) The Greek Economic Review, pp. 1-37; and "Financial Development: Theories and Recent Experience " (1989 ) 5 ( 4 ) Oxford Review of Economic Policy, pp. 13-27.



order of liberalisation and emphasises the all important role of policy credibility in the success of financial liberalisation adventure. The expectation of policy reversal may influence the attitudinal derailment of the programme. Hence, for Edwards, " even more important than determining the correct order of liberalization may be defining a consistent and credible policy package that will support which ever order is chosen "<sup>204</sup>.

The tendency for interest rates to skyrocket during certain periods of the financial liberalisation programme has been identified by Veneroso<sup>205</sup>, Harberger<sup>206</sup>, Corbo and Jamie de Melo<sup>207</sup>, and James Tybout<sup>208</sup>. The excessive high interest rates are attributed to distress borrowing, rolling over of bad loans with new borrowings and the exploitative practices of relending cheap foreign funds at high domestic rates.

The financial liberalisation experience highlights the importance of gradualism in the deregulation process, and counsels a cautious regulatory reform with stronger prudential norms. Political will and stability coupled with policy credibility are emphasised as vital underpinnings to the success of financial deregulation in developing countries<sup>209</sup>. Notwithstanding its theoretical refinements, the financial repression cum liberalisation

<sup>203</sup>. See Edwards, Sebastian. The Order Of Liberalization Of The External Sector In Developing Countries, ( Essays In International Finance, No. 156, December 1984, Princeton. Princeton University ) p. 19.

<sup>204</sup>. Loc. cit

<sup>205</sup>. See Veneroso, Frank., " New Patterns of Financial Instability " ( Washington, D.C. : World Bank, February, 1986 ) , p.17.

<sup>206</sup>. See Harberger, Arnold. C.. " Lessons for Debtor - Country Managers and Policymakers " in Smith and Cuddington (eds. ), International Debt and the Developing Countries ( Washington, D.C. : World Bank, March, 1985), pp. 236 -257.

<sup>207</sup>. See Corbo, Vittorio and Jaime de Melo, " Overview and Summary ". (1985) 13 (8) World Development, p. 364.

<sup>208</sup>. Ibid., pp. 863 -866.

<sup>209</sup>. See Edwards, op. cit, pp. 17 & 20 ; Diaz - Alejandro, op. cit . pp. 1 -24. and Fry (1991). op. cit. p. 429.

hypothesis has provoked reactions ranging from passive comments<sup>210</sup>, and critical insights to outright repudiation<sup>211</sup>.

## 2.10 Conclusions

There is no universally accepted definition of financial regulation because of its multidisciplinary nature and the differences in its conceptualisation from country to country. It is what the regulators do in fact. The objectives of financial regulations have

<sup>210</sup>. See Cho, Yoon Je., " Inefficiencies from Financial Liberalization in the Absence of Well Functioning Equities Markets ", ( 1986 ) 18 Journal of Money, Credit and Banking, pp. 191- 199. see Stiglitz, J. E. and A. Weiss , " Credit Rationing in Markets with Imperfect Information ", ( 1981 ) 71 ( 3 ) American Economic Review, pp. 393 - 410. see also Stiglitz and Weiss, " Incentive Effects of Terminations : Applications to the Credit and Labor Markets ", (1983) 73 ( 5 ) American Economic Review, pp. 912 - 927.

<sup>211</sup>. The neo - structuralist school of thought is made up of scholars like Van Wijnbergen , Lance Taylor, Edward Buffie and Akira Kohsaka to mention a few. The nomenclature of ' neo - structuralist ' signifies the theoretical affinities and differences of this school to the traditional structuralists of the Latin American fame. see Lim , J. " The New Structuralist Critique of the Monetarist Theory of Inflation " ( 1987 ) 25 Journal of Development Economics, pp. 45 - 61. See for a comprehensive discussion of the school - Fry (1991). op. cit. pp. 88-107; Gupta and lensink (1996), op. cit, pp. 50-68; and Sikorski (1996). op. cit. pp. 91 -102. see Taylor, Lance. , Structuralist Macroeconomics: Applicable Models for the Third World ( New York : Basic Books, 1983 ). pp. 98-103; see also Van Wijnbergen , S. . "Interest Rate Management in LDCs " ( 1983 ) 12 ( 3 ) Journal of Monetary Economics. pp. 433-452 ; Van Wijnbergen, S. , " Credit Policy, Inflation and Growth in a Financially Repressed Economy ", ( 1983 ) 13 ( 1-2 ) Journal of Development Economics. pp. 45 - 65. see Buffie, Edward. F. , " Financial Repression . the New Structuralists, and Stabilization Policy in Semi - Industrialized Economies " . ( 1984 ) 14 ( 3 ) Journal of Development Economics, p. 320. see Chang, Doug. and Woo S. Jung . , " Unorganized Money Markets in LDCs : The McKinnon - Shaw Hypothesis versus the Van Wijnbergen Hypothesis " ( Nashville, Tennessee, USA : Vanderbilt University, Department of Economics, Working Paper 84 - W21, June, 1984). see Owen. P. and Solis - Fallas, " Unorganised Money Markets and Unproductive Assets' in the New Structuralists ' Critique of Financial Liberalization " ( 1989 ) 31 Journal of Development Economics, pp. 341- 355; Germidis, D. , " Interlinking the Formal and Informal Financial Sectors in Developing Countries " (1990) 14 ( 1 ) Savings and Development, pp. 5-21; Fischer, B. L., " Savings Mobilization in Developing Countries: Bottlenecks and Reform Proposals ", (1989) 13 ( 2 ) Savings and Development, pp. 117 -132; and Hoff, K. and J. E. Stiglitz , " Introduction : Imperfect Information and Rural Credit Markets - Puzzles and Policy Perspectives ". ( 1990) 4 The World Bank Economic Review. A Symposium Issue on Imperfect Information and Rural Credit Markets, pp. 235 -250. see Jose Maria Fanelli. Roberto Frenkel and Lance Taylor. " The World Development Report 1991: A Critical Assessment " in International Monetary And Financial Issues For The 1990s, (1992) IUNCTAD . pp. 1 - 29.



been identified as varying from the protection of private, public and systemic interests to the promotion of the dictatorial or personal interests of the regulators.

The ascendancy of direct forms of financial regulation has been traced to the theoretical influence of classical theories which enunciated their beneficial effects. However, the developmental theory of regulatory repression has challenged the classical orthodoxy of financial regulation. An incomparable contribution of the theory to learning is the insight into the deleterious impacts of regulatory intervention in the financial sector and its social costs.. In the words of Fry, "government regulation of financial systems in developing countries has more frequently retarded than promoted economic development".<sup>212</sup>

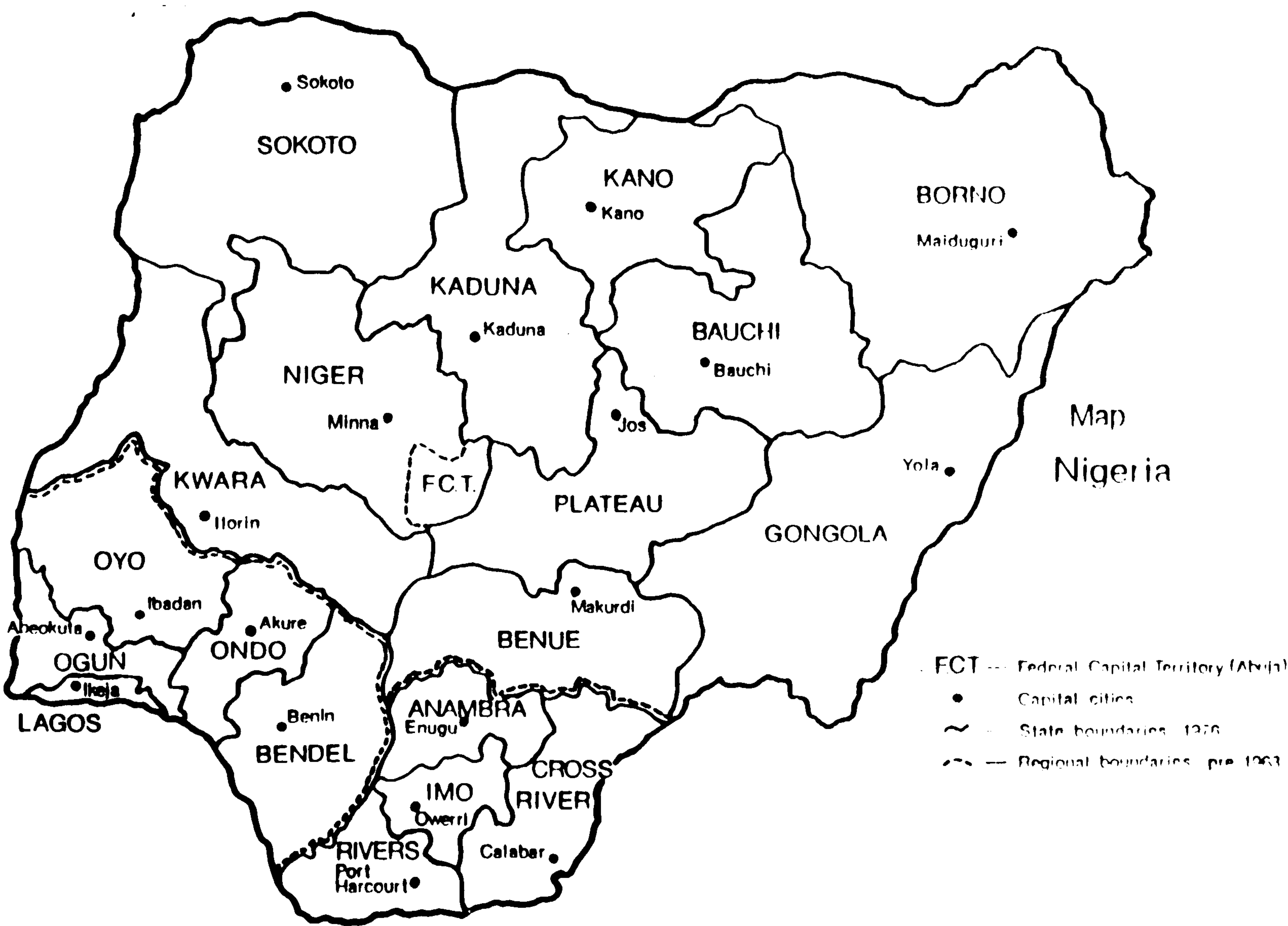
The Mckinnon-Shaw financial liberalisation theory has influenced significantly the intellectual and political thoughts on the modes of financial regulations, and has been embraced by IMF and World Bank<sup>213</sup>. It is the academic precursor to the current wave of financial liberalisation and deregulation that now pervade the regulatory structures of most developed and developing countries including Nigeria. It appears however that Nigeria adopted the Mckinnon-Shaw hypothesis half-heartedly and in wrong order. The gravamen of financial liberalisation is the removal of all repressive financial regulatory norms of the banking system. It is however a misconception to portray liberalisation as total elimination of all forms of financial regulation. The Mckinnon-Shaw developmental theory of regulatory repressionism affords a theoretical paradigm for evaluating the impact of banking regulation in Nigeria, and the Mckinnon-Shaw concept of financial liberalisation provides a schematic framework for assessing banking deregulation in the country.

<sup>212</sup>. See Fry (1991). op. cit., p.302.

<sup>213</sup>. See Fry ( 1991). op. cit., p. 245; see also Sikorski. op. cit., p. 91, and Mckinnon (1991). op. cit. pp. 12 & 13.



MAP OF NIGERIA



## **CHAPTER III**

### **POLITICAL,LEGAL AND ECONOMIC BACKGROUND**

#### **3.1 Introduction**

I have admired Nigeria as having all the resources to make her a leader in Africa; but have been ashamed that Nigeria has also all the qualities to corrupt and pervert African society<sup>214</sup>.

This chapter provides an insight into the historical, political, economic, legal and social structure of the Nigerian state that underpin the regulatory system including financial reforms. The chapter is divided into seven parts. The first part is the introduction. The second part analyses the colonial era and the third part discusses the post-colonial eras in the country. The fourth part highlights the Nigerian economy. The fifth part explains the legislative and governance structure of the country. The sixth part underscores the interface between the state, economy and the elite, while the conclusions are contained in the seventh part.

#### **3.2 The Colonial Era**

The British connection<sup>215</sup> with Nigeria began with the establishment of a consulate at Fernando Po under John Beecroft in 1849. In 1861, King Dosunmu ceded Lagos to Great Britain. The British consul also entered into several treaties<sup>216</sup> of protection and

<sup>214</sup>. See Okigbo, Pius.. *Essays in the Public Philosophy of Development. Lectures on the Structural Adjustment Programme*, Vol. 4, Fourth Dimension Publishers, Enugu,(1993). p. 126.

<sup>215</sup>. See Nicholson, I. F., *The Administration of Nigeria 1900-1960 : Men, Methods and Myths*, Clarendon Press, Oxford. (1969), pp. 15-26.

<sup>216</sup>. See Nwabueze, B.O., *A Constitutional History of Nigeria*, C.Hurst & Company, London. (1982). pp. 5-9. In 1885, Great Britain formally declared a protectorate over the Oil Rivers District including the areas covered by treaties concluded by Royal Niger Company. In 1887, the protectorate was extended to the

amity with some African kings and peoples in the area<sup>217</sup>. The Royal Niger Company which had been granted a charter in 1886 established direct political control over the areas covered by the charter which included the North of the Benue and stretched from Sokoto to Lake Chad<sup>218</sup>.

The Royal Niger Company concluded about 360 treaties which covered the areas included in its charter. The chiefs and the people of the concerned areas ceded " the whole of our territory to the Company, their heirs and assigns for ever "<sup>219</sup>. The company had powers to settle all native disputes and " to raise revenue, levy duties, defray the cost of administration, provide compensation for expenses incurred in obtaining Treaty rights; preserve public order; control trade within the limits permitted by the Act of The Berlin West Africa Conference of 1884-85...."<sup>220</sup>.

It was in the exercise of these legal powers that the company took political control of Northern parts of Nigeria in addition to its commercial operations. The greatest impetus for British expansion in Nigeria was however the " desire to establish and expand trade "<sup>221</sup> in cotton, palm oil, cocoa, timber and other tradeable goods.

The full colonial government over Nigeria was established<sup>222</sup> as from 1 January 1900 with the appointment of separate governors <sup>223</sup> for each of the three

Northern Nigeria. Afterwards, many independent kingdoms such as Benin and Abeokuta signed treaties of protection with Great Britain.

<sup>217</sup>. See Udoma, Udo., History and the Law of the Constitution of Nigeria, Malthouse Press Ltd, Lagos, (1994) p.66.

<sup>218</sup>. see Udoma, op. cit., p.24.

<sup>219</sup>. see Nwabueze, op. cit., 8.

<sup>220</sup>. see Udoma, op. cit., p. 24.

<sup>221</sup>. See Udoma, op. cit., p. 1.

<sup>222</sup>. In 1895, a new Secretary of State, Joseph Chamberlain assumed office in England and inspired a policy of effective occupation of Nigeria by the British Government. The administration of the colony and protectorates was transferred from Foreign Office to Colonial Office, and the charter of Royal Niger Company was revoked and the Crown assumed jurisdiction over colony of Lagos and the Protectorates of Southern and Northern Nigeria in 1900.



colonial structures<sup>224</sup> within the Nigerian state. The nature, personality and background of the governors differed<sup>225</sup>. The Legacies of the wide disparities in the backgrounds of the governors and their actions remained the features of the modern Nigeria, with unequal developments, ethnic rivalries and strife over sectional domination.

The British Government amalgamated the Northern and Southern Nigeria<sup>226</sup> in 1914, and constitutional developments were undertaken in 1922, 1946, 1951 and 1954 respectively<sup>227</sup>. The demand for independence reached a higher crescendo and at a constitutional conference in 1958 in London, the imperial Government agreed to independence for Nigeria on 1 October 1960 and the Independence Constitution of 1960 was promulgated<sup>228</sup>.

### **3.3 The Post Colonial Era**

A fruitful intellectual paradigm for analysing the Nigerian political, legal and institutional structures in the post -independence era has been provided by Joseph<sup>229</sup>, as

<sup>223</sup>. Sir William Macgregor was appointed for Colony and Protectorate of Yorubaland, and Sir Ralph Moor was appointed for the Southern Protectorate, while Lord Frederick Lugard became the governor of Northern Nigeria.

<sup>224</sup>. i.e. the colony and Yorubaland protectorate, protectorate of Southern Nigeria and the Protectorate of Northern Nigeria. The Colonial government structure consisted of the Governor-General of Nigeria, the Governors of Southern and Northern Nigeria and the administrative officers who reported directly to the Colonial Secretary in London.

<sup>225</sup>. See Nicholson, op. cit. p. 42. The governors of the Colony and Southern protectorate were persons of considerable administrative background and experience with political acuity and religious dispositions. Thus, both were characterised as philistines. On the other hand, Lord Lugard was a public school educated military officer without administrative experience, hence belonged to the barbarian school of thought. The term barbarian was coined and used by Nicholson. See Nicholson, op. cit., p. 42.

<sup>226</sup>. See Elias, T.O., Nigeria: The Development of its Laws and Constitution, Stevens and Sons, (1967) p. 22.

<sup>227</sup>. See Nwabueze, op. cit., p. 46. The 1922 Constitution introduced a concept of elective principle, and a new legislative council for the country except Northern Nigeria. The 1946 Constitution empowered the legislative council to legislate for the whole of Nigeria and established regional councils in each of the regions. The Constitution of 1951 introduced elected majorities into the central legislature and granted legislative powers to regional houses of assembly in respect of certain matters. The 1954 Constitution introduced federal structure into the country and regionalised both the judiciary and civil service

<sup>228</sup>. See Elias, op. cit., p. 117.

<sup>229</sup>. See Joseph, Richard. A., Democracy And Prebendal Politics In Nigeria : The rise and fall of the Second Republic, Cambridge University Press, New York, ( 1987).

prebendalism and clientelism. Prebendalism typifies a political behaviour under which political offices are captured and utilised for the personal benefit of the office holders and their support groups. Clientelism underscores the patron-client ties which underlie the relationship between the office holders and their supporters on the basis of ethnic, regional and religious identities.

The form of politics which operated in Nigeria since independence irrespective of regime in power has been characterised as " prebendal politics "<sup>230</sup>. This is defined as an unremitting and unconstrained struggle for possession and access to state offices, with the chief aim of procuring direct material benefits to oneself and one's acknowledged communal or other sectional group. This peculiar political culture of Nigeria has bequeathed on the country devastating consequence of political instability and economic mismanagement.

### **3.3:1 Corruption and Instability Between 1960 and 1966**

Although at first the independent Nigerian state had looked to the future with considerable prospect for rapid growth and development, prebendal politics dominated the Nigerian political scene. Sir Abubakar Tafawa Balewa became its prime minister under a parliamentary system of government. The Southern Cameroon which formed part of Nigeria was excised from the country in 1961 following a plebiscite. In 1963, the last vestige of colonial regime was exterminated when the country attained a republican status. The government was however confronted by two critical problems of secular deterioration through corruption, profligacy and waste, and the episodic deterioration through the sequence of exhausting and unresolved crises<sup>231</sup>.

A serious dimension to these problems was the determination of the northern elites to enforce a regime of political domination over the other tribes which was manifested in

<sup>230</sup>. Ibid., p. 55.

<sup>231</sup>. See Diamond, Larry., *Class, Ethnicity and Democracy in Nigeria*. Syracuse University Press, New York, (1988), p. 289.



suppression of opposition through unconstitutional means<sup>232</sup>, and precipitated crises<sup>233</sup>. This charged atmosphere provided the opportunity for military intervention in Nigerian politics. The Nigerian military was not free from prebendalism. Indeed, it had been prebendalised by deliberate political and legal acts in 1962 when the dominant Northern politicians forced through a law which introduced a quota system into army recruitment based on ethnic origin and a pre-allocated quota for a specified area, rather than merit and ability. The law politicised the Nigerian military since advancement in the military became dependent on one's 'patrons'.<sup>234</sup>

On 15 January 1966, soldiers led by Major Nzeogwu staged a coup which resulted in the massacre of the prime minister, the premiers of the North and West regions, the finance minister and some high-ranking soldiers predominantly of northern origin. The coup partially succeeded, and the most senior officer who had escaped assassination took over the reins of the government. Thus, Major-General Aguiyi-Ironsi, an easterner, became the Nigerian first military Head of State and reverted Nigeria to a unitary system of government<sup>235</sup>. He abolished the then existing four regions of Nigeria and reintroduced provincial system of government<sup>236</sup>. Prebendal politics were continued by the appointment of General Ironsi's tribe men as political acolytes<sup>237</sup>.

The apparent ethnic bias of General Ironsi infuriated the northern elements in the Nigerian Army, and on 28 July 1966 a coup organised by soldiers of northern origin ended

<sup>232</sup>. See Nigerian Opinion, February 1966, p. 16.. See also *ibid.*, p. 302.

<sup>233</sup>. The Northern Peoples Congress (NPC), the party at the federal government tried to shift the balance of power to its favour by manipulating the results of 1962-3 census and 1964 federal election to its favour, and imposing minority faction of Action Group (AG) as regime in Western Region.

<sup>234</sup>. See Joseph, *op. cit.*, p. 71.

<sup>235</sup>. See Decree No. 34 of 1966 which abrogated federal structures of Nigeria.

<sup>236</sup>. See Kirk-Greene, A. and Rimmer, Douglas., *Nigeria Since 1970: A political and economic outline*, Hodder And Stoughton, London, (1981), p. 26.

<sup>237</sup>. See Udoma, *op. cit.*, p. 237.



General Ironsi's regime and life. Lieutenant-Colonel Yakubu Gowon, a northerner, emerged as the new Head of State. The rise of Gowon in the military hierarchy and the subsequent killing of some easterners in the northern part of Nigeria angered Lieutenant - Colonel Ojukwu, an easterner, and Military Governor of Eastern Nigeria. All attempts to reconcile Gowon and Ojukwu broke down irretrievably.

### **3.3:2 War and Oil Boom (1967 - 1975)**

On 30 May 1967 the Eastern Region seceded. Earlier, General Gowon had created twelve states<sup>238</sup> for the country and abolished the existing four regions in a pre-emptive move to neutralise the tribal and ethnic motivations of the secessionists. Nevertheless a civil war resulted and lasted till 12 January 1970 after a huge loss of human and material resources<sup>239</sup>. It may be underscored that oil played an influential factor in the Nigerian civil war<sup>240</sup> with the Federal Government and the Eastern Regional government squabbling over the rightful recipient of oil proceeds from the multinational companies that had been exploring oil since 1957.

In the aftermath of the civil war, the OPEC price moves of 1973 bequeathed the country with massive oil revenue. The Gowon regime embarked on euphoric planning and spending<sup>241</sup>, and attained new height in public corruption league<sup>242</sup>. General Gowon further prebendalised the Nigerian state with the centralisation of all economic and commercial activities in the government. The increased interventionism was accompanied

<sup>238</sup>. See States (Creation and Transitional Provisions) Decree No. 14 of 1967.

<sup>239</sup>. The estimated cost of the war to the Federal Government was N£300m, and over a million Nigerians lost their lives. See Kirk-Greene, A.H.M., *Crisis And Conflict In Nigeria : A Documentary Sourcebook 1966-1970*, Vol.II, Oxford University Press, London, (1971), p.470.

<sup>240</sup>. See Ikein, Augustine.A., *The Impact of Oil on a Developing Country : The Case of Nigeria*, Praeger, New York, (1990 ), p. 65.

<sup>241</sup>. See also Olorunsola, Victor. A., *Soldiers and Power : The Development Performance of the Nigerian Military Regime*, Hoover Institution Press, (1977).

<sup>242</sup>. See Nwabueze, B. O., *Military Rule And Constitutionalism in Nigeria*, Spectrum Law Publishing, (1992), p. 296.



by personalisation of government and absence of accountability<sup>243</sup>. The line between public and private activities evaporated. General Gowon also reneged<sup>244</sup> on his promise of a return to civil rule in 1976. In the final event, the Gowon regime was removed in a bloodless coup on 30 July 1975.

### **3.3:3 Quest for Sanity and Civility (1975 - 1979)**

General Murtala Mohammed regime replaced Gowon regime. General Mohammed, a northerner, attempted a radical transformation of the Nigeria society plagued by the vices of corruption, waste, and social decadence. He also promised a return to civil rule in 1979. The regime purged the civil service of perceived corrupt and bloated officers, and prosecuted military officers for corrupt practices. However, General Mohammed was killed in a bloody abortive coup on 14 February 1976. The second in command, General Obasanjo, a southerner, took over the reigns of the government.

The Obasanjo regime increased the number of states from 12 to 19, and introduced democratic reforms to the local governments as a prelude to the restoration of civilian rule. The institutions for drafting and approving a new Constitution were established. During the Obasanjo regime, the oil shock and recession set in and the revenue of the nation dwindled. The government maintained the external account by borrowing on the Eurodollar market<sup>245</sup>. The regime also introduced palliative austerity measures that were essentially cosmetic.

The regime also fuelled more prebendal politics by enhancing state's "omnipresence and omnicompetence"<sup>246</sup> in economic and commercial spheres. Corruption was prevalent<sup>247</sup> under the regime as well. Perhaps, the high point of the regime was in

<sup>243</sup>. See Joseph, op. cit., p. 73.

<sup>244</sup>. See Forrest, Tom., *Politics And Economic Development In Nigeria*, Westview Press, Oxford, (1993), p. 56.

<sup>245</sup>. See Okigbo, (1993) op. cit., p. 126.

<sup>246</sup>. See Joseph, op. cit., p. 75.

<sup>247</sup>. See Nwabueze (1993), op. cit., p. 297.

fulfilling the promise of a return to civil rule, and on 1 October 1979, the Obasanjo regime handed over to a civilian government.

#### **3.3:4 Bungled Democracy and Military Paternalism (1979 - 1985)**

The 1979 Constitution was enacted to provide the constitutional framework for the civilian government. It introduced presidentialism, state equality, and federal character to redress ethnicity, domination and weak governance, and imposed state control on the economy. Unfortunately, the constitution serves to legalise the prebendal practices in the Nigerian polity, as demonstrated by the principle of federal character enshrined in the constitution<sup>248</sup>.

Under this principle, the composition of the government must reflect the multi-ethnic structure of Nigeria. The composition of the armed forces<sup>249</sup> and all governmental appointments must reflect this principle, and specifically at least one Minister must be appointed from each state<sup>250</sup>. The effect has been the accentuation of clientelism and prebendalism. It has been asserted that this principle which sacrifices merit in governmental appointments may be "twisted into a factor for regressive penny-picketing"<sup>251</sup>, and this was the exact scenario under the civilian regime.

The President, Alhaji Shehu Shagari, a northerner, was notorious for his political complacency and managerial incompetence<sup>252</sup>. These negative values were compounded by state patronage syndrome of the politicians. The state was regarded as the centre of capital accumulation, and firm link was established between commercial and political

<sup>248</sup>. See S. 14 (3) of the Constitution of the Federal Republic of Nigeria 1979, as amended.

<sup>249</sup>. See S. 197(2).ibid.

<sup>250</sup>. See S. 135 (3). ibid.

<sup>251</sup>. See Kirk-Greene and Douglas. op. cit., p. 30.

<sup>252</sup>. See Forest. op. cit., p. 73.



interests. The government was concerned with distributive issues and development programmes were neglected<sup>253</sup>.

The absence of well-defined economic policy was accompanied by financial in discipline, massive corruption, state violence, northern domination and electoral rigging. Although the oil revenue was dwindling, approximately US \$14 billion took flight from Nigeria between 1979 and 1983. The economic and political crises which engulfed the nation in the aftermath of the 1983 election culminated in yet another military intervention on 31 December 1983.

The military regime of General Buhari was puritanical in its approach<sup>254</sup>, and attempted social and moral re-orientation of Nigerians by declaring a war against indiscipline. Considerable attention was given to economic problems, and the regime curtailed government expenditure, controlled budget deficit and restricted imports. The servicing of Nigerian debts was made a priority.

However, the government was unable to reach an accord with IMF and World Bank on the economic policies to be pursued<sup>255</sup>. The international curtailment of credit aggravated economic woes. The regime also faced criticisms of selective treatment and ethnicity in its punishment of corrupt politicians, especially those from the defunct ruling political party<sup>256</sup>. This setting provided the scenario for yet another military coup in August 1985, when General Babaginda became the Military President of Nigeria.

<sup>253</sup>. Ibid., pp. 75-78.

<sup>254</sup>. The politicians were detained under Decree NO. 3 of 1984 ( Recovery of Public Property ) Decree. see also Decree No. 2 of 1984 ( State Security : Detention of Persons ) Decree under which a person may be detained for an indefinite period.

<sup>255</sup>. See Forest, op. cit., pp. 100-101.

<sup>256</sup>. See Nwabueze (1993), op. cit., p.220.

### 3.3:5 The regimes of predatory dictatorship (1985 - 1998)

Within twenty-five years of independence, Nigeria had declined from a nation of prebendal politics to one of predatory dictatorship, according to one commentator<sup>257</sup>. Lewis emphasises predation in this sense as the abandonment of diffused clientelism and weak institutional frameworks by Nigerian governments for " more arbitrary and debilitating control by a single ruler "<sup>258</sup>. The predatory dictatorship begun under the Babaginda regime. General Babaginda was at first a benevolent dictator reforming<sup>259</sup> the repressive machinery of his authoritarian predecessor. The Babaginda government also adopted the structural adjustment programme<sup>260</sup> that culminated in the financial liberalisation of the Nigerian banking system.

The maverick dictator was however dishonest and disingenuous with his political transition programme<sup>261</sup> to a civil rule because its conditions were leading towards increased authoritarianism and self succession by the General<sup>262</sup>. There was systematic destabilisation of all civil and political forces<sup>263</sup>. The regime was incredibly corrupt and lacking in financial discipline to sustain economic reforms. Between 1988 and 1994, it was

<sup>257</sup>. See Lewis, Peter., *From Prebendalism to Predation : the Political Economy of Decline in Nigeria*, (1996) 1 *The Journal of Modern African Studies*, Vol. 34, p. 79 at p. 80.

<sup>258</sup>. Loc. cit.

<sup>259</sup>. The politicians in prisons had their cases reviewed and liberal regime was in place. The regime permitted public debate on the IMF loan and instituted a framework for transition to civil rule.

<sup>260</sup>. See Olukoshi, Adebayo. O., (ed.), *The Politics of Structural Adjustment In Nigeria*, James Currey Ltd, London, (1993), p. 8.

<sup>261</sup>. Preparatory to the civilian regime, the 1989 Constitution was promulgated and a population census was undertaken. The results of these ventures were aborted. The Babaginda regime also increased the number of states to 30. See Mamman, Tahir., *The Law and Politics of Constitution-Making in Nigeria, 1862-1989 : Issues, Interests and Compromises*, Ed-Linform Services, Maiduguri, Nigeria,(1998), p. 324.

<sup>262</sup>. See Ibrahim, Jibrin., " The Transition to Civil Rule : Sapping Democracy "in Olukoshi, Adebayo. O., (ed.), *ibid.*, p. 129.

<sup>263</sup>. *Ibid.*, p. 136.



found that the regime could not account for \$12.4 billion<sup>264</sup>. The death knell of the regime was however sounded when after instituting civil rule at the local, state and federal levels of government, it annulled the presidential election of 12 June 1993 for no justifiable reasons. General Babaginda was forced to abdicate in the ensuing political crisis, and the interim government<sup>265</sup> which replaced him was removed in yet another military intervention after political and legal setbacks.

General Abacha, a coup veteran and Babaginda's henchman emerged as the military Head of State and transformed himself to an octopus dictator. The spate of indefinite detention, state killing, enforced exile, forceful coercion and fabricated treasonable cases under the regime was legendary<sup>266</sup>.

The economic policy had no direction with the abolition of liberalisation, and reinstatement of control regime and the enunciation of the phantom policy of guided deregulation. Corruption became a legitimate economic pursuit reinforced by the beleaguered General's bid for self succession<sup>267</sup> under a concocted political transition programme<sup>268</sup>. The regime of the maximum ruler however came to an abrupt end on the 8 June 1998 when the dictator suddenly died of an heart attack<sup>269</sup>. His demise paved way for

<sup>264</sup>. See Soremekun, Kayode., " Oil and the Democratic Imperative in Nigeria "in Olowu, D., Soremekun, K., and Williams, A., (eds.), Governance and Democratisation in Nigeria, Spectrum Books Ltd, Ibadan, (1995), p. 103.

<sup>265</sup>. The interim government was headed by Chief E. Shonekan, but the Lagos High Court later declared the government illegal.

<sup>266</sup>. Many prominent Nigerians including former Head of State, Gen. Obasanjo and the incumbent deputy Head of State, Gen. Diya have been sentenced to death for treason.

<sup>267</sup>. See Tell, (Nigerian magazine) January 12, 1998, p. 20.

<sup>268</sup>. General Abacha increased the number of states in Nigeria to 35, and organised elections into local government councils and parliaments.

<sup>269</sup>. See The Express, Wednesday, June 10, 1998, p. 16.



his succession by General Abdulsalam Abubakar who became the new Nigerian military ruler<sup>270</sup>.

### 3.4 Nigerian Economy

In the immediate post colonial period, Nigeria was an agrarian society with agriculture as the most important sector of its economy<sup>271</sup>. Its share of GDP in 1960 was 63 per cent. The sector was the principal foreign exchange earner for the country accounting for 82 per cent of the total export value of the nation in 1962. It also had the largest share of the employment of about 70 per cent. The country was regarded as one of the world's poorest countries.

The oil boom in the early 1970s however impacted positively on the growth and development of Nigerian economy. It became transformed from an agrarian society to a monetised economy. The country emerged as the sixth largest oil exporter in the world. Oil became the dominant sector of the economy accounting for 90 per cent of the exports<sup>272</sup>, 30 per cent of the GDP, and 70 per cent of the Federal Government total revenue. The per capital GNP of a meagre \$90 in 1968, rose to \$1,020 by 1980<sup>273</sup>.

The new found oil wealth resulted in massive growth and transformation of the Nigerian economy. It motivated a tremendous expansion in public enterprises and public investments in large scale industrial projects. Manufacturing grew from about 5 per cent in 1960 to 10 per cent in 1973, and an annual compound rate of 15.6 per cent between 1975 and 1978. The growth was however not sustainable because the industries relied heavily on imported raw material<sup>274</sup>. Furthermore, the dominance of oil sector resulted in a

<sup>270</sup>. Loc. cit.

<sup>271</sup>. See Forest, op. cit. p. 33.

<sup>272</sup>. See GATT, Nigeria, Trade Policy Review, Vols. i & ii, GATT, Geneva, (1991).

<sup>273</sup>. See Todaro, Michael. P., Economic Development, Longman, New York & London, (1995).  
Third imp. p. 56.

<sup>274</sup>. See GATT, Vol. i, op. cit. p. 19.



corresponding decline in the agricultural sector which accounted for only 2.4 per cent of the country's foreign exchange earning in 1980.

The heavy dependence of the economy on petroleum and imported inputs made the economy highly vulnerable to changes in the world demand and prices for petroleum. The prebendal politics underlying the Nigerian state which instigated state intervention in most economic activities encouraged euphoric planning and spending by the government, massive public corruption and distortion of all the sectors of the economy including the banking system.

The oil wealth enabled the Nigerian government to intervene directly in the banking sector by compulsory acquisition of all foreign interests in Nigerian banks. This brought the banking system into the public sector where it became a victim of Nigerian prebendal politics. Although the practice of looting banks by influential politicians and persons through irrecoverable loans was a common phenomenon towards the end of the colonial era<sup>275</sup>, it attained new heights with the ownership of banks by the Federal Government of Nigeria. A large number of ministers<sup>276</sup> and government officials<sup>277</sup> procured loans from these acquired banks with irregular loan documentation. This cavalier attitude of Nigerian government officials and politicians rendered most banks unsound.

<sup>275</sup>. Two leading Nigerian statesmen, Dr Azikiwe and Chief Awolowo had been implicated in banking irregularities which occurred when both men were premiers of Eastern and Western regions of Nigeria. see The Report of the Tribunal to inquiry into allegations reflecting on the Official Conduct of the Premier of, and certain persons holding Ministerial and other Public Offices in The Eastern Region of Nigeria. (London, HMSO, Cmnd. 51, 1957 ). see also Report of Coker Commission of Inquiry into the affairs of Certain Statutory Corporations in Western Nigeria, 1962. ( Lagos, Federal Ministry of Information, 1962)respectively.

<sup>276</sup>. An example is the case of Alhaji Femi Okunnu. a Federal Commissioner of Ministry of Works.who obtained loans from U.B.A and Standard Bank respectively in 1973 and 1974 during his ministerialship. See "Government Views on Second Report of the Federal Assets Investigation Panel ", Ministry of Information, Lagos , 1978, pp. 12-15.

<sup>277</sup>. Some Permanent Secretaries to the Federal Government like Mr Philip Asiodu and Alhaji I. M. Damcida, procured loans from banks during their tenure of office. see " Government Views on Second Report of the Federal Assets Investigation Panel ", Ministry of Information, Lagos , 1978, pp. 5 - 7.



The Nigerian economic problems<sup>278</sup> surfaced in 1978 when the oil prices slumped and reached its alarming stage with the precipitous decline in oil prices in 1981. The austerity measures of the Obasanjo regime and the economic stabilisation programme of the Shagari regime failed to redress the economic problems, and the regimes began excessive external borrowing. The Shagari regime refused to swallow the IMF-World Bank bitter pills of reforms, and its successor Buhari regime maintained the belligerent posture to the IMF despite curtailing the fiscal profligacy of the government<sup>279</sup>. The persistence of the economic crisis and another massive decline in oil prices in 1985, compelled the Babaginda regime to succumb to the dictates of IMF and World Bank's Structural Adjustment Programme (SAP) in 1986. Thereafter, financial deregulation would become the cornerstone of Nigerian economic policy.

### **3.5 The Legislative and Governance Structure of Nigeria**

The legislative and governance structure of Nigeria is dependent on the type of political regime in power. Civilian regimes had practised both the parliamentary<sup>280</sup> and presidential<sup>281</sup> systems of government whereby the legislative powers for the federation were vested in the National Assembly which comprised the Senate and the House of Representatives<sup>282</sup>. The modes of exercising the powers were specified in the Constitution<sup>283</sup>. The executive powers were vested in the President<sup>284</sup>, whilst the cabinet

<sup>278</sup>. See Okigbo.(1993) op. cit. p. 126.

<sup>279</sup>. See Olukoshi. Adebayo. O., (ed.). op. cit. pp. 6-7.

<sup>280</sup>. This was the system of government between 1960 and 1966 ( First Republic ).

<sup>281</sup>. This system was in operation between 1979 and 1983 ( Second Republic ).

<sup>282</sup>. See S.4 of the 1979 Constitution of the Federal Republic of Nigeria (as amended ).

<sup>283</sup>. See S. 54. *ibid*.

<sup>284</sup>. See S. 5. *ibid*.



possessed powers under the parliamentary government. The judicial powers of the country were exclusively allocated to the Judiciary<sup>285</sup>.

This constitutional distribution of powers have been irrelevant under military regimes that have predominantly ruled Nigeria . The legislative powers of the military government are absolute and unlimited, and there is no legally prescribed procedure for law-making<sup>286</sup>. The Decree merely provides that the " power of the Federal Military Government to make law shall be exercised by means of Decree signed by the Head of the Federal Military Government"<sup>287</sup>, and that a decree is made when it is signed by the Head of the Federal Military Government<sup>288</sup> . This is the circumstances in which a military ruler becomes the supreme authority in Nigeria, and the manner of exercising legislative powers depends on his personal predilections.

The powers for the determination of national policy on major issues are vested in Supreme Military Council<sup>289</sup>, and those for policy guidelines on financial, economic and social matters are vested in the Federal Executive Council<sup>290</sup>. Both councils are presided over by the Head of State. The Judicial powers are granted to the Judiciary subject to the powers of the military government to exclude, or delimit such powers<sup>291</sup>, or vests it in a Tribunal. With respect to banking regulation, the judiciary has been passive because of the

<sup>285</sup>. See S. 6. *ibid*.

<sup>286</sup>. See Nwabueze. B. O., *Military Rule And Constitutionalism*, Spectrum Law Publishing. Lagos. (1992). p. 8.

<sup>287</sup>. See for example SS. 3(1) of Constitution (Suspension and Modification) Decree No.1 of 1984.

<sup>288</sup>. See for example SS. 1&2 of Constitution (Suspension and Modification) Decree No.1 of 1984. The body is now called Provisional Ruling Council.

<sup>289</sup>. See S. 10, *ibid*.

<sup>290</sup>. See S. 11. *ibid*.

<sup>291</sup>. See S. 1(2)(b) of the Federal Military Government ( Supremacy and Enforcement of Powers) Decree 1984. See Abiola, Ojo., *Constitutional Law and Military Rule in Nigeria*, Evans Brothers (Nigeria Publishers) Limited, Ibadan, Nigeria. (1987). p.133.

provision in the banking laws which tend to restrict judicial challenges of actions of banking regulators. Section 49 (1) of the Banks and Other Financial Institutions Decree of 1991 provides:

Neither the Federal Government nor the Bank nor any Officer of that Government or Bank, shall be subject to any action , claim or demand by or liability to any person in respect of anything done or omitted to be done in good faith in pursuance or in execution of, or in connection with the execution or intended execution of any power conferred upon that Government, the Bank or such officer, this Decree<sup>292</sup>.

This provision which is identical to section 36 (1) of the repealed Banking Decree<sup>293</sup> of 1969 has been interpreted to restrict the scope of challenges of Nigerian banking regulator in *Merchant Bank Ltd V. Federal Ministry of Finance*<sup>294</sup>.

This is the nature of legislative and governance structure that influenced financial regulation and deregulation in Nigeria since military regimes occupy the government for most periods under consideration. It also explains the reason for paucity of banking law during the short-lived second Republic in Nigeria. The civilian regime utilised the banking laws enacted by the military rather than embarked on cumbersome legislative procedure under the constitution.

### **3.6 State, Elite, and Economy**

The political disarray and inept economic policies which characterise the Nigerian state are deeply rooted in colonial administration. The utilisation of politics for purely economic purposes appears to be the greatest bequest of the colonial administration to its political successors, the Nigerian elite. Picciotto<sup>295</sup> has provided a schematic framework

<sup>292</sup>. See Decree No. 25 of 1991 as amended.

<sup>293</sup>. See Decree No.1 of 1969 as repealed.

<sup>294</sup>. [1961] ALL NLR 598. See also the decision of the English Court of Appeal in *Bank of Credit & Commerce International V. Bank of England* reported in *The Times* of 5/12/98, p. 30.

<sup>295</sup>. See Picciotto, Sol., " Firm and State in the World Economy ", in Faundez and Picciotto (eds.), op. cit pp. 217 - 225.



that demonstrates the nature of corporation as political and economic body in mediaeval Europe. This framework is useful in analysing the interrelationship of politics and economics in Nigeria.

The Royal Niger Company enjoyed partial state sovereignty and state support in its acquisition of parts of Nigeria, and expansion of trading power over the acquired territory. Indeed, the Chairman of Royal Niger Company, Sir Goldie Taubman, was regarded as the father of Nigeria. A company like Royal Niger Company was not a mere private venture rather "in many cases monarchs personally initiated the formation of such companies, and they and layers of the nobility both lent their status to the enterprises as well as participating in them financially"<sup>296</sup>. This was the lesson that the Nigerian elite learnt from the colonialists about the relationship between economics and politics.

The Nigerian elite in the post-independent era gravitated towards the state in order to use it to achieve economic and social power. The inheritors of colonial power tried "to build a material base by using its political power to generate economic power"<sup>297</sup>. The machinery for transmitting political power into wealth is state intervention in economic activities. The benefits of state interventionism in terms of wealth, power, patronage and status for the Nigerian elite propelled not only increased interventionism but also a "struggle for power of unprecedented intensity"<sup>298</sup> resulting in aggravated political instability.

The economic interests which underlie political governance in the country render political and economic competition normless, with a tendency "to violate the legitimate methods of contestation to whatever degree necessary to capture and retain power"<sup>299</sup>.

<sup>296</sup>. Ibid. p. 218.

<sup>297</sup>. See Ake. Claude., " The Nigerian state : antinomies of a periphery formation " in Ake. Claude., (ed.). Political Economy Of Nigeria, Longman, Essex, (1985), p. 19.

<sup>298</sup>. Loc.cit.

<sup>299</sup>. See Diamond. op. cit., p. 297.



The Nigerian elite appeal to ethnicity and tribalism to mask class struggle for access to economic power. The desperate struggle is to win the control of state power as such "control means for all practical purposes being all powerful and owing everything. Politics becomes warfare, a matter of life and death"<sup>300</sup>.

Economic factors therefore dominate the political power struggle in Nigeria. The military interventions in politics in the country are also motivated by the foregoing considerations. The soldiers have "tasted politics and they know the money is there"<sup>301</sup>. Indeed, the dominant factor in Nigerian politics is the ambition of individual officer in the Nigerian Army for political power, hence the country is described as a nation where "every soldier see himself as a potential president "<sup>302</sup>.

The foregoing provides an insight into the circumstances in which politics predominate economic policy, regulation and reforms in Nigeria. It also articulates the interrelationship between economics and political instability. Any proposition for economic and financial reforms must be formulated within the context of the schematic interaction between politics and economics. A neglect of this reality will doom any reform proposal to failure with disastrous consequences. The state in Nigeria is not impartial or regarded as impartial<sup>303</sup>.

In fact, economic regulation of whatever shade is partial and politicised, and a tool for the economic advancement of the ruling class hence, the fundamental necessity for "adequate institutional"<sup>304</sup> arrangement to ensure its neutrality. Specific rules "regulating, checking, controlling and canalising dysfunctional elite behaviour"<sup>305</sup> in Nigeria have been

<sup>300</sup>. see Ake. Claude., (1982). pp. 1162-3.

<sup>301</sup>. See Newsweek, August 10, 1992.

<sup>302</sup>. See Nwabueze (1993). op. cit p. 334.

<sup>303</sup>. See Ake (1985). op. cit. p. 10.

<sup>304</sup>. Loc. cit.

<sup>305</sup>. See Graf, William. D., The Nigerian State. James Currey, London.(1988) p. 244.

advocated, while the arrest of state expansion, and promotion of economic pluralism and private initiatives in some views appear crucial to stem economic irrationality and political instability.

### **3.7 Conclusions**

The sole motivation of British colonial incursion into Nigeria was purely commercial to enable British industrialists and traders to secure tradeable goods and raw material like cotton, cocoa and rubber. Many of the geo-political problems of the modern Nigeria such as unequal development, northern domination, educational differences are rooted in colonial administration. These political and economic diversities remain the serious problems of the Nigerian state now plagued by political instability.

The high incidence of political instability may be attributed to prebendal politicking, clientelism, and the economic quest for wealth by Nigerian elite through the machinery of the state. In striking resemblance to the British colonialists, the Nigerian elite regards politics as the instrument of economic advancement. Politics therefore becomes war of attrition, and capital accumulation of the elite dominates all state economic and political policies through interventionism. This is the political structure that governs and shapes financial regulation and deregulation in Nigeria.

**PART III: BEFORE LIBERALISATION: THE NIGERIAN BANKING  
REGULATORY AND INSTITUTIONAL STRUCTURE**



## **CHAPTER IV**

### **THE EVOLUTION AND STRUCTURE OF THE NIGERIAN BANKING SECTOR IN THE PRE-LIBERALISATION ERA (1892-1985)**

#### **4.1 Introduction**

This chapter examines the evolution and structure of the Nigerian banking system in the pre-liberalisation era. Its main theme is that banking regulation in Nigeria during the period under review was determined by the historical evolution of the banks, the socio-political and economic circumstances of the country, and the classical theory of financial regulation.

The chapter has six sections. The first section contains the introduction. The second section traces the evolution of the banking sector. The third, fourth and fifth sections identify and discuss the three different eras of financial regulation of the Nigerian banking system. The sixth section analyses the fourth era of financial regulation in Nigeria and underscores the factors that influenced the regulatory shift in the post-independent Nigeria. It is concluded in the seventh section that banking regulation in Nigeria was largely laissez-faire prior to 1968 when financial regulation became increasingly interventionist. Many factors underpinned the regulatory shift including the Nigerian political system, the growth of economic nationalism and socialism, the Nigerian civil war and the influence of the classical theorists.

#### **4.2 Evolution of the Banking Sector**

The seeds of the modern financial system in Nigeria<sup>306</sup> were sown with the eradication of the commodity currencies prevalent in the pre-banking era. Prior to the

<sup>306</sup>. The Nigerian financial sector embraces all its financial entities and can be classified into the monetary and non-monetary financial institutions. The institutions consist of the central bank; the banking sector ; the non- bank financial intermediaries, the money and capital markets. The object of this study is the banking sector, and the term bank used to be a generic term for commercial bank, merchant

incursion of the colonialists, Nigeria had developed a functional political and economic system with a regime of multiple currencies and a barter economy. With the ascendancy of the colonial rulers, the British currency was superimposed on the commodity currencies in order to encourage uniformity and monetarisation of the traditional society.

It is the abolition of the commodity currencies that foreshadowed the emergence of the modern financial institutions because ' financial institutions could not develop until barter economy gave way to the money economy ' <sup>307</sup>. Thus, the evolutionary starting point of the Nigerian modern banking sector in 1892 may be traced to the period of the standardisation of currency.

#### **4.2.1 Standardisation of Currency**

Cotton, gin, cowrie shell, and rum were the commodity currencies prevalent in Nigeria during the eighteenth and nineteenth centuries . A number of imported currencies also migrated and circulated in the Colony and hinterland<sup>308</sup>. Imported currencies such as Spanish doubloon, American gold double-eagle, the half eagle and eagle, Mexican dollar, and Austrian Maria Theresa dollar had fixed exchange rates to the cowrie shells that were the primary local medium of exchange. Ekpo<sup>309</sup> reported that in 1820 one Maria Theresa dollar was worth two thousand shells, and in 1851 two thousand five hundred shells were equal to one Spanish doubloon.

The British gold sovereign, the British silver and bronze coins were introduced in 1825<sup>310</sup>. Subsequently, the British colonial authority embarked on an era of sporadic

bank, an acceptance house, discount house and financial institution. See S. 41 of the Banking Decree No. 1 of 1969 as amended by the Banking ( Amendment ) Decree No. 88 of 1979.

<sup>307</sup> . W. Okefic Uzoaga. " A Survey of Nigeria's Modern Financial System " in Onoh, J. K. (ed). The Foundations of Nigeria's financial Infrastructure, Croom Helm Ltd, London. (1980). p.31.

<sup>308</sup> . See Walter Ofonagoro. Trade and Imperialism in Southern Nigeria 1881- 1929, New York. NOK (1979) p.91.

<sup>309</sup> . Ekpo. Eyo . Nigeria And The Evolution Of Money. Central Bank of Nigeria. Lagos. Nigeria. (1979) P. 91.

<sup>310</sup> . Ibid.



legislation to end the multiplicity of currencies. Governor Ussher fired the legal salvo through the Ordinance No. 2 of 11 May 1880 that demonetised all the cadre of currencies then in existence within ten days, and imposed British silver coins as the only legal tender effective from 21 May 1880 <sup>311</sup>.

In 1904, the importation of cowrie shells was prohibited and criminalised in order to eliminate them as monetary units. The other species of commodity currencies like manilla and metal currencies were demonetised by the Native Currency Repeal Ordinance of 1911 so that the monetary hegemony of the British coins became firmly established in 1912 <sup>312</sup>.

Following their introduction in 1880, the use of British coins gradually spread beyond the Colony to other parts of the country upon the territorial expansion of the British rule into the hinterlands. Consequently, the utility of the silver coins both for administrative and commercial purposes increased tremendously. The problems of transportation and safety of the silver coins from the British Royal Mint spurred Mr George William Neville, the Lagos agent of the shipping firm, Messrs Elder Dempster and company, to moot the idea of the establishment of a bank in Lagos<sup>313</sup>. The chairman of Elder Dempster and Co., Alfred Lewis Jones, accepted the idea and requested the African Banking Corporation to open a branch in Lagos.

In 1892, the African Banking Corporation (ABC) opened its branch in Lagos with the approval of the colonial office, and became the first bank established in Nigeria. Its birth signified the arrival of the Western banking system to the Nigerian financial sector.

<sup>311</sup>. See P.N.C. Okigbo, *op cit.*, p.76.

<sup>312</sup>. *Ibid.*, p.77.

<sup>313</sup>. See Ekpo, Eyo, *op cit.*, p.92.



### **4.3 Era of Laissez-Faire: The Growth of the Banking System(1892 -1952)**

The seventy year period examined here could be called the era of laissez-faire or free banking <sup>314</sup> due to the absence of banking regulation. Any person could establish a bank provided the company was registered under section 2(1) of the 1922 Companies Ordinance and complied with section 105 of the said Ordinance under which a banking company must render a half-yearly statement of its liabilities and assets, and exhibit the same in a conspicuous place in its office. It was in this free banking era that the first bank in Nigeria began operation.

The African Banking Corporation (ABC) commenced business in Lagos and was also appointed the banker to the Colonial Government with partial monopoly to import silver coins from the Royal Mint and regulate their circulation. The bank's operation was however short-lived<sup>315</sup> and came to an end in 1893 when the bank transferred its Lagos interest to Messrs Elder Dempster and Co<sup>316</sup>.

Although, the ABC operation abruptly ceased, the commercial and administrative needs of a bank persisted. Hence, in March 1894, a joint stock bank namely Bank of British West Africa (BBWA) was incorporated in London with an authorised capital of £100,000. The BBWA opened its office in Lagos and succeeded to the function and privileges of the ABC. It extended its tentacles to other parts of Nigeria<sup>317</sup> and West Africa. In 1899, the Anglo- African Bank was established and in 1905 changed its name to Bank of Nigeria. The Bank of Nigeria merged with BBWA on 20 June 1912. Several

<sup>314</sup> .See G. O. Nwankwo, op. cit., p.45.

<sup>315</sup> . Due to economic depression as a result of the Egba-Ijebu inter-cine hostilities and alleged malpractices of Elder Dempster management in Lagos.

<sup>316</sup> . Loc. cit.

<sup>317</sup> . The bank is now known as the First Bank of Nigeria.

other banks such as Colonial Bank<sup>318</sup>, British and French Bank for Commerce and Industry<sup>319</sup>, International Bank for West Africa<sup>320</sup>, and Bank of America<sup>321</sup> emerged on the Nigerian banking system.

A common characteristic of these early banks is that all belonged to the category called expatriate banks because their capital was entirely foreign -owned. This made them susceptible to accusations that they engaged in discriminatory acts against Nigerians in their credit operations<sup>322</sup>, denied them loan facilities and often humiliated them<sup>323</sup>. Schartz<sup>324</sup>, however, defended the expatriate banks against the allegation, and Professor Nwankwo contends that "in most cases the accusation is either not founded or misplaced"<sup>325</sup>.

The expatriate banks were also assailed for servicing the export and import trade rather than financing indigenous industry in Nigeria. They pointedly refused to contribute to the economic development of the country but 'geared their efforts and resources

<sup>318</sup>. The bank is now known as the Union Bank of Nigeria and has 60% of its equities vested in Nigerians.

<sup>319</sup>. In 1956, the bank removed the words "for Commerce and Industry" from its name, and in October 1961, its Nigerian branches were taken over by a new bank, the United Bank for Africa which was incorporated in Lagos. The bank is still a leading financial institution with majority ownership by Nigerians.

<sup>320</sup>. This was established in 1959 in Kano. Its ownership had since been mutualised.

<sup>321</sup>. Some other foreign banks also established branches in Nigeria in the early 1960s. These were Bank of America, Chase Manhattan, Bank of India, and Arab Bank which established in 1960, 1961, and 1962 respectively.

<sup>322</sup>. See P.N.C. Okigbo, *op. cit.*, p.85.

<sup>323</sup>. See Zik, *Selected speeches of Dr Nnamdi Azikiwe*, Cambridge, (1961), p. 212.

<sup>324</sup>. Schatz, Sayre P; *Nigerian Capitalism*, University of California Press Ltd, Berkeley and Los Angeles, California, U.S.A . (1977).

<sup>325</sup>. See G.O Nwankwo, *The Nigerian Financial System*, Macmillan Press Ltd, London, Hong Kong. (1980) p.71.

towards achievement of Britain's national economic objectives' <sup>326</sup>. Perhaps the greatest objection to the expatriate banks was that they invested their deposits and other resources in the London capital market to the detriment of the Nigerian financial system<sup>327</sup>.

#### **4.3.1 Indigenous Banks**

The laissez-faire era also witnessed the birth of numerous indigenous banks and ushered in the period of minimalist regulation. Resentment at the discriminatory and contemptuous treatment by expatriate banks imbued the Nigerians with the desire to establish indigenous banks<sup>328</sup> that would neutralise the financial edge of the European banks. In 1929, the first indigenous bank -Industrial and Commercial Bank Limited came into being, but went into liquidation in the following year. Another bank called the Nigerian Mercantile Bank was floated in 1931 and existed until 1936 when it shut its doors <sup>329</sup>.

On 11 February 1933, the National Bank of Nigeria was established by some indigenous business men<sup>330</sup> amidst the economic depression. The bank weathered the storm and remained the oldest indigenous bank as at 1985 (the end of the pre-liberalisation era) having existed for fifty-two years<sup>331</sup>. In 1945, the Agbomagbe Bank<sup>332</sup> was

<sup>326</sup> .See Olukonyinsola Ajayi, Financial and Legal Implications of the Nigerian Capital Market, Evans Brothers (Nigeria Publishers) Ltd, Ibadan, Nigeria, (1984) pp. 29 -31.

<sup>327</sup> . Ibid., pp.29 -30.

<sup>328</sup> . The term indigenous banks refer to banks whose capital was entirely owned by Nigerian capitalists. This is in contradistinction to the foreign or expatriate banks with foreign owned capital.

<sup>329</sup> . Ekpo. Eyo, op cit., p.47.

<sup>330</sup> . Over the years, the ownership of the bank had been transferred from the private holders to the Government of Western Nigeria now succeeded by Oyo, Ondo, and Ogun States respectively.

<sup>331</sup> . See P.N.C. Okigbo, op cit., p.86.

<sup>332</sup> . The bank's name had been changed to WEMA BANK with the ownership now vested in the earlier-mentioned successors to the Government of Western Nigeria.



incorporated with an authorised capital of N10,000. In spite of liquidity problems, it survived through several lifeboat operations of the Western Nigerian Government which eventually acquired it.

The good fortunes of Agbomagbe Bank did not extend to another bank formed in the same year under the name of Nigeria Penny Bank which failed in 1946. The perennial failure of the indigenous banks with the attendant losses to the depositors forced the Colonial Government to ponder on the advisability of enacting legislation providing for the control of the establishment and operation of banking corporations. The demise of Penny Bank in particular created the necessary consensus between the Government and banks on the desirability of a controlling legislation for enterprises engaged in banking business in the interest of the general public and the banking community <sup>333</sup>.

#### **4.4 Era of Minimalist Regulation (1952 - 1958)**

The Government established a commission of inquiry on 7 September, 1948 under Mr G. D. Paton of the Bank of England with the duty of recommending the form and extent of banking control which should be introduced<sup>334</sup>. The commission submitted its report on 25 October 1948, and about three and a half years thereafter, on 22 May 1952, the Nigerian legislature enacted 'An Ordinance for the Regulation of the Business of Banking'. Thus, the 1952 Banking Ordinance emerged as the first banking regulation in Nigeria.

It is therefore apposite to assert that the first attempt at regulation of the Nigerian banking industry was motivated by endemic environmental factors, to wit the failure of indigenous banks and the consequent injury to the public. The enactment of the 1952 Banking Ordinance signalled the end of the laissez-faire era, and the beginning of the period of minimalist regulation marked by meagre regulatory requirements.

<sup>333</sup>. See G.O. Nwankwo (1980). *op cit.*, p.47.

<sup>334</sup>. See Charles V. Brown. *The Nigerian Banking System*, George Allen & Unwin Ltd. London, (1966). p.31.

The main regulatory features of the 1952 Banking Ordinance consisted of liberal rules of entry and exit<sup>335</sup>, capital and reserves<sup>336</sup>, reserve fund<sup>337</sup> and rules on lending restrictions<sup>338</sup>, cash reserve<sup>339</sup> and dividend restrictions<sup>340</sup>. Section 3(2) of the 1952 Banking Ordinance stipulated that the "incorporation of a company which has as its object or one of its objects the carrying on of banking shall not be registered unless its nominal capital is not less than twenty-five thousand pounds". The power of granting banking licence was vested in the Financial Secretary by Section 6 (1) which provided that " no company shall carry on banking in Nigeria unless it holds a licence granted by the Financial Secretary in such behalf".

A far-reaching provision designed to curtail insider abuse of the indigenous banks was contained in Section 7 (1) of 1952 Banking Ordinance inter alia :

No banking company shall make any loans or advances on the security of its own shares or grant unsecured loans or advances in excess of £300 to any one or more of its directors or to a firm or private company in which it or any one or more of its directors is interested as director, partner, manager or agent, or to any individual, firm or private company of whom or of which any one or more of its directors is a guarantor.

The period of minimalist regulation was however short-lived and ended six years later for causes which had their origins in the closing years of the laissez- faire era, and some shortcomings of the Ordinance. Particularly between 1947 and 1952 the Nigerian financial system witnessed an unprecedented banking boom with a record time phenomenal increase in the banking companies registered in Nigeria. The exact figure of

<sup>335</sup>. See S. 6 of the Banking Ordinance No. 15 of 1952.

<sup>336</sup>. See S. 3 *ibid*.

<sup>337</sup>. See S. 9 *ibid*.

<sup>338</sup>. See S. 7 *ibid*.

<sup>339</sup>. See S. 8 *ibid*.

<sup>340</sup>. See S. 10 *ibid*.



the emerging banks has been a subject of debate, but there is a general agreement that the number of banks ballooned<sup>341</sup> during the period.

Some of the reasoned opinions on the factors underpinning the banking boom were divided. There are suggestions it was occasioned by the diversion of the profits from the trade boom of the second World War into investment in banking<sup>342</sup>. Other views attributed the banking boom to the anticipation and foreknowledge of Government's intention regarding the Paton Report <sup>343</sup>.

The crux of the matter lies however in the banking crisis in which the emerging banks were involved soon after the passage of the 1952 Ordinance. The rate of failure of indigenous banks was such that by the time the 1952 Ordinance became fully operational in 1955 only two of the twenty-two emerging banks registered between 1947 and 1952 had not collapsed. One of these, the African Continental Bank<sup>344</sup>(ACB) survived until recently. The other, the Merchant Bank, eventually collapsed in 1960 under the burden of fraud and bad management.

The catastrophic failure of most of the indigenous banks was often attributed to the monopolistic conducts of the expatriate banks which enjoyed the exclusive patronage of the British firms<sup>345</sup>. Indeed, the real causal factors may be in corporate misconduct,

<sup>341</sup>. The Financial Secretary in a statement to the Federal House of Assembly in 1952 put the number of the banking companies that registered between 1947 and 1952 in Nigeria as 185 . The Central Bank of Nigeria in its study recorded that only twenty-two banking companies registered in Nigeria between 1945 and 1952. Dr C V. Brown indicates that no less than eighteen indigenous banks registered in the fifteen months between February 1951 and May 1952. Dr Pius Okigbo on his own suggests that 25 banks were registered between 1928 and 1952.

<sup>342</sup> . G.O. Nwankwo (1980), op cit., p.47.

<sup>343</sup> . See W.T. Newlyn and D.C. Rowan, Money and Banking in British Colonial Africa. p.108; See also . O. Teriba, "Nigeria's Indigenous Banks", Bankers' Magazine, (August. 1969) p.79.

<sup>344</sup>. The ACB had succeeded an earlier registered bank namely Tinubu Bank Limited on 29 October, 1947 under its present name. All the shares of ACB's predecessor were subscribed by Dr Nnamdi Azikiwe, but the Government of the Eastern Region of Nigeria later acquired interest in the bank.

<sup>345</sup> . See Adedoyin Soyibo and Femi Adekanyc, The Nigerian Banking System in the context of policies of financial regulation and deregulation. AERC Research paper 17, Nairobi. (Dec. 1992) p.3.



counterfeiting, gross under- capitalisation, reckless branch expansion<sup>346</sup>, or as graphically stated by one failed bank in its winding up notice "---persistent stealing, bad management, inexperienced accounting-----"<sup>347</sup>.

However, the litany of bank failures had an impact on the existing regulatory structure. It exposed the defects of 1952 Ordinance, and by implication made regulatory failure culpable for the bank failure. The inadequacies and lacunae of the said Ordinance such as inadequate rules on reserve fund, liquidity requirements, and absence of rules on business restrictions, banking examination, and approved auditors came under close scrutiny, and was reinforced by the World Bank's recommendation of 'further guidance and support for African Banking' <sup>348</sup> in Nigeria. In the midst of barrage of attacks against the 1952 Ordinance, it was not surprising that the Loynes Report<sup>349</sup> recommended a fresh regulation, and the new Banking Act of 1958, together with the Central Bank of Nigeria Act, also of 1958, came into operation .

#### **4.5 Era of Liberal Regulation (1958 - 1968)**

With these pieces of legislative innovations, the period of minimalist regulation ended and a new regime of liberal financial regulation characterised by the permissive nature of its dictates, flourished. The regulatory stipulations of the 1958 Banking Act mainly consisted of liberal entry and exit rules<sup>350</sup>, capital and reserve fund rules<sup>351</sup>, rules on

<sup>346</sup> .See G.O. Nwankwo (1980). op cit., p.49.

<sup>347</sup> . The defunct Standard Bank of Nigeria Limited. Daily Times. September 24. 1952. This bank had no relationship with the Standard Bank that later became First Bank of Nigeria.

<sup>348</sup> . See International Bank Of Reconstruction and Development. The Economic Development of Nigeria, Johns Hopkins University Press. (1954). P.98.

<sup>349</sup> . The Federal Government commissioned a study by Mr J B de Loynes in 1958 to report on the establishment of the Central Bank of Nigeria and the ancillary matters. See Report by J.B . Loynes on "The establishment of a Nigerian Central Bank, the Introduction of a Nigerian Currency and other Associated matters " Nigerian Secretariat Library No. 214 B. University of Lagos Library edition, 1957.

<sup>350</sup> . See S. 3 of the Banking Act 1958. Cap 19.

<sup>351</sup> . See SS. 4 and 5 *ibid*.

business operations and functions<sup>352</sup>, dividend restrictions<sup>353</sup> banking examination<sup>354</sup>, special examination<sup>355</sup>, approved auditors<sup>356</sup> and liquidity requirements<sup>357</sup>.

The Central Bank of Nigeria Act of 1958 also conferred certain financial regulatory powers on the Bank which included powers to prescribe liquidity requirements, rediscount rates, and to engage in open market operations<sup>358</sup>. Section 31 of the Central Bank of Nigeria Act<sup>359</sup> stated that the "Bank shall make public at all times its minimum rediscount rate". Section 40(1) of the same law<sup>360</sup> empowered the CBN to "prescribe from time to time by publication in the Gazette the minimum amount of specified liquid assets which each bank operating in Nigeria under the Banking Act is required to hold".

The general powers of the CBN was preserved under Section 29 (1)(f) of the said law<sup>361</sup> which stated that subject to any express provision of the law the CBN may "generally conduct business as a bank, and do all such things as are incidental to or consequential upon the exercise of its powers or the discharge of its duties under this

<sup>352</sup>. See S. 7 *ibid*.

<sup>353</sup>. See S. 6 *ibid*.

<sup>354</sup>. See SS. 11 and 13 *ibid*.

<sup>355</sup>. See S. 12 *ibid*.

<sup>356</sup>. See S. 15 *ibid*.

<sup>357</sup>. See S. 8 *ibid*.

<sup>358</sup>. The establishment of the Central Bank of Nigeria had regulatory, political and economic motivations. Firstly, the West African Currency Board (WACB) did not provide a distinctive national currency prerequisite for an independent country, since the WACB currency circulated in four British Colonies of West Africa. Secondly, there was no specialised financial monetary management training for Nigerians. Thirdly, the developments of indigenous financial institutions as well as money and capital markets were neglected.

<sup>359</sup>. See Central Bank of Nigeria Ordinance, Cap. 30 of 1958.

<sup>360</sup>. See Central Bank of Nigeria Ordinance, Cap. 30 of 1958 as amended by Central Bank of Nigeria (Amendment) Act No. 17 of 1962.

<sup>361</sup>. See Central Bank of Nigeria Ordinance, Cap. 30 of 1958.



Ordinance" This regime prevailed until 1968 when an avalanche of new regulation was unleashed on the banking industry.

The justification for the regime of liberal regulation can be located in the historical circumstances surrounding its inauguration. The Government was determined that the embarrassing failure of the indigenous banks would not be repeated. Thus, the additional step in the establishment of a regulatory authority- Central Bank of Nigeria " to monitor, regulate and check the practice of commercial banking was all calculated to restore confidence of the public in this vital sector of the financial system" <sup>362</sup>.

Indeed, as early as 1952 Late Dr K.O.Mbadiwe had moved a private member's motion in the House of Representatives for the establishment of a Central Bank in Nigeria to facilitate internal monetary management and international monetary co-operation. The House upon deliberation decided on a feasibility study in the first instance. Consequently, Mr J.L.Fisher of Bank of England was appointed to conduct the study. In his report, Mr Fisher opined that 'it would be inadvisable to contemplate the establishment of a central bank at the moment'<sup>363</sup>. The report provoked resentment from the nationalists and was effectively jettisoned when the World Bank mission<sup>364</sup> which visited Nigeria in 1953 examined the issue and recommended a 'State Bank of Nigeria' with limited functions <sup>365</sup>.

Thus, in 1957, the services of Mr J.B.de Loynes, an adviser of the Bank of England was engaged to make recommendations on 'the establishment of a Nigerian Central Bank, the introduction of a Nigeria currency and other associated matters '. De

<sup>362</sup> . P.N.C. Okigbo. op cit p. 92.

<sup>363</sup> . Report by J. L. Fisher on ' The desirability and practicability of establishing a Central Bank in Nigeria as an instrument for promoting the economic development of the Country' (Lagos : Government Printer, 1956) p.18.

<sup>364</sup> . See Uche, Chibuike, U., " Bank of England vs the IBRD: Did the Nigerian Colony Deserve a Central Bank?", (1997) 34 Explorations In Economic History. .220 at p.213.

<sup>365</sup> . IBRD Report. op cit., p.56.



Loynes recommended the establishment of the Central Bank of Nigeria (CBN)<sup>366</sup>, and a draft legislation based almost entirely on his report was promulgated in 1958.

The success of the regulatory change is illustrated by the fact that no bank failure occurred throughout the life span of regime of liberal regulation which made impossible the extravagant banking expansion of the preceding era. Between 1959 and 1962 only eleven banks were incorporated or registered in Nigeria, making the total number seventeen<sup>367</sup>.

#### **4.6 From Laissez-Faire to Banking Interventionism in Nigeria: The Post Independence Experience**

The immediate post- independent Nigerian banking system relied almost exclusively on traditional colonial-era regulatory measures and the period was described as largely liberal<sup>368</sup>. However, the honeymoon with the colonial regulatory legacies was short-lived. The years 1968 and 1969 signalled the " break "<sup>369</sup> with English law by Nigerian banking regulations. Before these developments, the English bureaucrats had returned home and their positions had been taken over by Nigerians<sup>370</sup>. Hence the break was total.

The landmark years of 1968 and 1969 witnessed a transformation of the Nigerian banking regulatory environment. In these years, the Central Bank of Nigeria Ordinance of 1958 was subjected to sporadic and intermittent changes, and the Banking Ordinance of

<sup>366</sup> . Loynes Report. op cit.. p.4.

<sup>367</sup> . Teriba , O. (1970) " The development of banking habit in Nigeria " a paper presented at the Annual Seminar of the Nigerian Institute of Bankers , 12 -17 October.

<sup>368</sup> . See Akanle. O.. " Regulation Of Trade And Investment In Nigeria " in Ajomo. M. A., Akanle Oluwole, & Adewale Omobolaji , (eds.) Regulation Of Trade And Investment In An Era Of Structural Adjustment : The African Experience, Nigerian Institute Of Advanced Legal Studies, Lagos.(1995) p. 43.

<sup>369</sup> . See Sofola. Olatokunbo. The Nigerian Law Of Consumer Credit And Security. ( Ph.D. thesis. King's College, University of London, April 1988 ) p. 219.

<sup>370</sup> . See Brown. C. V., op.cit.. pp. 142 & 144.

1958 was abrogated and replaced. The 1968 amendment to the CBN Ordinance alone endowed the CBN with seven additional regulatory powers<sup>371</sup>.

The 1968 and 1969 amendments bequeathed the CBN with far -reaching powers of direct financial regulation of the banks. These consisted of powers to prescribe and vary cash reserves, specified liquid assets, special deposits and stabilisation securities<sup>372</sup>. The additional powers included powers to regulate the maximum and minimum interest rates, direct loans to specified persons, and fix ceilings on the volume or aggregate amount of loans, advances and discounts outstanding or granted by any bank<sup>373</sup>. Section 2(1) of Central Bank of Nigeria Act (Amendment) (No.3) of 1968 stipulated that the "Central Bank may, after consultation with the Commissioner prescribe a minimum ratio of total loans, advances and discounts, granted to indigenous persons, to be maintained by each bank licensed under the Banking Act".

The 1969 Banking Decree imposed new regulatory requirements on the banks including restrictive rules on entry and exit, new rules on capital and reserves, restrictive business operations rules, cash reserves, specified liquid assets, special deposits, stabilisation securities, interest rate regulation, advertisement and branching restriction rules<sup>374</sup>.

This era of regulatory interventionism further impacted on the existing banking structure in remarkable ways. It instigated the predominance of public ownership of the banking sector, and the converse relative absence of privately owned indigenous banks.

<sup>371</sup>. See Onoh, J. K.. " Commercial Banks' Deposit Liabilities And Credit Generation " in Onoh, J. K.. (ed.). *op.cit.*, p. 89.

<sup>372</sup>. See S. 40 of the Central Bank of Nigeria Act Cap 30 Laws of Federation of Nigeria and Lagos 1958. as amended by Decree No. 4 of 1969.

<sup>373</sup>. See S. 40 of the Central Bank of Nigeria Act Cap 30 Laws of Federation of Nigeria and Lagos 1958, as amended by Decree No. 4 of 1969. See also S. 2 of the Central Bank of Nigeria (Amendment) Decree (No. 3) Decree No. 50 of 1968.

<sup>374</sup>. See SS. 2,4,6,12,13. and14 of the Banking Decree No. 1 of 1969.



The ownership of the so called expatriate banks was compulsorily nationalised such that their authentic classification became 'mixed bank'. The consequence of this regulatory shift was the abandonment of the British regulatory mechanisms and its attendant reliance on traditional control measures for the Nigerian regulatory methods with emphasis on direct regulatory measures.

The sudden and firm rejection of the British and World Bank mission's inspired traditional modes of financial regulation in Nigeria can be traced to many factors. Some of these factors relate to the specificity of the Nigerian political system, while the others are economic, intellectual and general in nature. These factors will now be discussed.

#### **4.6.1 Nigerian Political System and Financial Regulation**

The shift into financial regulatory interventionism was influenced and facilitated by the socio -politicality of the Nigerian society. The efficacy of banking regulations and the realisation of the hegemonic functions of the central bank are indeed "closely connected with the political attitudes of the countries concerned and cannot, therefore be dealt with exclusively as technical questions "<sup>375</sup>.

With regard to the peculiarities of the Nigerian nation, the first critical particularity is the fusion and homogeneity of the political, economic, and the military classes into one all-embracing crony capitalist clan. The Nigerian businessmen propelled regulatory interventionism through a phenomenon called " Our Government " mentality<sup>376</sup>. This phenomenon therefore made the demand for selective allocation of credit to the business class and preferential financial access inevitable. It also culminated in the increasing

<sup>375</sup>. See Jucker- Flectwood, E., op. cit., p. 55.

<sup>376</sup>. This was founded on the belief that the Nigerian government ( "our government " ) must not only create a conducive economic atmosphere and business support. but " that the government should aid Nigerian businessmen in direct, personal, day-to-day, and immediately tangible ways " see Schatz, Sayre. P., op. cit pp. 84 - 85.

agitation for governmental intervention in the banking industry since the " government has to a significant extent been popularly conceived of as a bestower of benefits "<sup>377</sup>.

The British complicity in the emergence of an economic cum political class in a setting that was conducive to the abuse of political power in Nigeria has been underscored. A policy of bolstering those considered as the responsible elements of the Nigerian population was employed by the colonialists. According to Lee " (T)he British were not unaware that those coming to power in the colonies tended to constitute an economic as well as a political class, but did not want to discuss it publicly "<sup>378</sup>.

In the circumstances, the predominantly self seeking political class used the attainment of political power for personal enrichment and political entrenchment<sup>379</sup> and found the banking sector in Nigeria as the most accessible source of funds. It is pertinent to recall here Professor Galbraith's assertion that "(P)ower serves the acquisition of income; income accords power over the pecuniary reward of others"<sup>380</sup>.

The regulatory and governmental intervention in the banking sector was considered by the political class as a means of rewarding friends and punishing enemies<sup>381</sup>. A serious damaging characteristic of the political class that regulated and owned the banking sector in Nigeria is according to Professor Ladipo the " pathological desire of Nigerians, especially the politicians, to amass individual wealth within the shortest time possible"<sup>382</sup> which led to a "general failure in Nigeria to distinguish between public, party

<sup>377</sup>. see Post, K. W. J., *The Nigerian Federal Election of 1959: Politics and Administration in a Developing Political System*, Oxford University Press, London,(1963), p. 390.

<sup>378</sup>. See Lee, John. M., *Colonial Development and Good Government*, Clarendon Press, Oxford,(1967), p. 98.

<sup>379</sup>. See Schatz, *op.cit.*, p. 161.

<sup>380</sup>. See Galbraith, J. K., *The Good Society: The Humane Agenda*, Sinclair-Stevenson, Great Britain,(1996) p. 65.

<sup>381</sup>. See Schatz, *op .cit.*, p. 164.

<sup>382</sup>. See Ladipo, O. O., *Nigerian Economic Development And International Externalities*. ( Inaugural Lecture Series 79, Obafemi Awolowo University, January 14, 1986 ) p. 8.



and private financial interests"<sup>383</sup>. The structure of the political and economic power enabled a few Nigerians to gain control of the government apparatus largely for the promotion of personal interest under the guise of public control and state interest. As David Calleo<sup>384</sup> admirably contends the State tries to take over the commercial market place and the interest groups try to take over the State.

The tendency of the Nigerian political class to cause destructive distress to the banking sector had been observed and recognised by the World Bank mission in 1953 hence the mission cautioned against close affinity between the government under the political class and the banking sector<sup>385</sup>. The political trend also influenced the mission's recommendation of the transference of banking supervision from the Ministry of Finance to a State Bank (CBN).

Indeed, within a short time span of the mission's report eminent politicians like Dr Nnamdi Azikiwe, the former premier of the Eastern Region of Nigeria and first President of Federal Republic of Nigeria and Chief Obafemi Awolowo<sup>386</sup>, former premier of the Western Region of Nigeria were implicated in banking irregularities involving the ACB and NBN before the Foster-Sutton<sup>387</sup> and Coker<sup>388</sup> Judicial inquiry Tribunals, respectively.

<sup>383</sup>. See Schatz. *op. cit.*, p. 166.

<sup>384</sup>. Cited in Okigbo. Pius.. *Essays in the Public Philosophy of Development*, Vol. 3 : Growth and Structure of the Nigeria Economy, Fourth Dimension Publishers. Enugu,(1993). p. 184.

<sup>385</sup>. See *The Economic Development of Nigeria - IBRD. op.cit.*, p. 159

<sup>386</sup>. Ironically, it was the same Chief Awolowo who later as the Federal Commissioner for Finance and Vice -Chairman of the Federal Executive Council of Nigeria directly supervised the evolution and intensification of regulatory interventionism and Nigerian unorthodoxy in banking regulation in Nigeria.

<sup>387</sup>. See Report of the Tribunal to inquire into allegations reflecting on the Official Conduct of the Premier of, and certain persons holding Ministerial and other Public Offices in The Eastern Region of Nigeria. (London, HMSO. Cmnd. 51,1957 ).

<sup>388</sup>. See Report of Coker Commission of Inquiry into the affairs of Certain Statutory Corporations in Western Nigeria 1962. ( Lagos. Federal Ministry of Information. 1962 ).

Suffice it to recognise like Dr Okigbo that "(W)ith independence and intrusion of partisan politics into the financial system, direct and wanton interference in the administration of banks..... polluted the system "<sup>389</sup> and " intrusion of partisan politics in financial system destroyed it "<sup>390</sup>.

This standardised political culture also typified the second civilian government of Nigeria . Professor Osunbor observes in respect of this regime that "under the guise of ensuring national control over this sector the grant of banking license became extremely restricted and a subject of political patronage with the result that the country became chronically underbanked and with very few branches ."<sup>391</sup> The civilian rulers of the 1979 - 83 also demonstrated " how government revenue could also be used to build personal and political empires at the expense of developmental philosophy "<sup>392</sup>.

This insight into the socio-political environment of financial regulation in Nigeria necessitates a digression into the military dimension of Nigerian politics and its consequent effect on financial regulation. Since 1966, the military regime<sup>393</sup> has occupied a prominent position in Nigerian legal, political and financial system and history.

The military rule in Nigeria has remarkable features of frequent legislative activity and legislative absolutism or supremacy and it was to these peculiarities that the massive regulatory and governmental interventionism in the banking sector owed their origin. Indeed, while the deposed civilian government was cautious and reluctant to embark on

<sup>389</sup>. See Okigbo, Pius., *Essays in the Public Philosophy of Development*, op. cit., p. 210.

<sup>390</sup>. Loc. cit.

<sup>391</sup>. See Osunbor, O. A., " Trends In The Regulatory Framework In Banking Legislation From 1970 To 1992 " in *The Nigerian Banking And Finance In Transition : Shaping The Future*, op. cit., p. 23.

<sup>392</sup>. See Syngc, Richard., *Nigeria to 1993: Will Liberalisation Work?* ( EIU Economic Prospects Series, Business International, Special Report No. 1134 ) p. 16.

<sup>393</sup>. Military rule spans 29 out of the 38 years of Nigeria's independent existence till date. This period has been characterised by persistent instabilities of governments, bureaucracy and policies including financial regulation.



further intervention, the military regimes constituted themselves into masters of financial repression and intervention.

The difference of financial regulatory mechanisms under the military and civilian governments may be located in the absence of legally prescribed procedure for law making under the former and explains the reason why all the regulatory repression of the banking sector in Nigeria occurred under the military rule. This nature of military lawmaking also ensured that in the financial regulatory creativity the "Government..... became deprived of the benefit of ideas and opinions other than those tendered by public functionaries and perhaps by proximate decision -makers and others of the elite group within the corridors of power."<sup>394</sup> Perhaps it may be mentioned that despite the patent financial illiteracy of the core of military political leadership, the head of the final authority on monetary and banking policies in Nigeria under military regime has usually been a member of this novice class.

The Nigerian military class shares the culture of personal enrichment, political entrenchment and massive corruption with its civilian political counterpart. Matter of factly, the political system in Nigeria "whether military or civilian, has usually been based on patronage"<sup>395</sup> and rents remain important in the regulation of the banking sector and the Nigerian economy in general<sup>396</sup>. This culture and the legislative nature of the military regime have given rise to "a highly personalised topology of the rules and regulations"<sup>397</sup> in the banking sector. A common legacy of the endemic political culture of Nigeria has been the impairment of the bureaucracy including the financial bureaucrats at the CBN and

<sup>394</sup>. See Ogunbanjo, C. O., *Nigeria's economic and industrial development ~ which way?* ( Nash Publications, London, 1983 ) p. 46.

<sup>395</sup>. See Bevan, David, Paul Collier, and Jan. William Gunning., *Nigerian Economic Policy and Performance : 1981-92.* ( Centre for the Study of African Economies, University of Oxford, May 1992 ) p. 65.

<sup>396</sup>. Ibid. p. 59.

<sup>397</sup>. See Okigbo, Pius., *Essays in the Public Philosophy of Development.* op. cit., pp. 258-259.

Finance Ministry through politicisation, prebendalism, political paternalism, mediocrity and grave corruption.

#### **4.6.2 Banking Interventionism in Nigeria: General Underlying Factors**

The first *raison d'être* of direct control of banking system is the growth of economic nationalism after the attainment of independence and republicanism that found expression in important legislation. Although the first republican government acted with guided caution and restraint in rebuffing the calls for nationalisation and state capitalism<sup>398</sup>, the succeeding military governments fanned the embers of economic nationalism and signified the change of attitude with the promulgation of laws with far reaching intervention in the banking sector such as the Banking Decrees which amended the CBN Act; the Banking Decree of 1969; the Companies Decree of 1968; and the Nigerian Enterprises Promotion Decree of 1972.

Another factor which facilitated the emergence of direct regulatory measures was the financing needs of the government. This is well encapsulated in the CBN assertion that "The government of the newly independent Nigerian nation, anxious to promote accelerated economic development, viewed the CBN as an instrument for mobilising development-oriented finance. In particular, the domestic financial system was expected to generate a substantial part of the funds projected in the development plan"<sup>399</sup>.

The other factor that propelled regulatory intervention in the banking sector was the ideological romance with socialism by succeeding governments. According to Professor Aboyade "everyone was fashionably one kind of socialist or another"<sup>400</sup>, and all sorts of socialism converged in Nigeria even though "(T)here was nothing on record to indicate

<sup>398</sup>. See Ogunbanjo, C. O., *Nigeria - The Search for Economic Stability* ( Onestop Design and Print. Great Britain, 1986 ) pp. 98 -101.

<sup>399</sup>. See *Twenty Years Of Central Banking In Nigeria*. op. cit., p. 106.

<sup>400</sup>. See Ojetunji Aboyade. " The Economy Of Nigeria " in Peter Robson &D. A. Lury ( eds. ). *The Economy Of Africa* ( Evanston : Northwestern University Press. 1969 ) pp.191 -192.



that Nigerians were 'socialists' or 'communists' "<sup>401</sup>. Indeed, Ekundare<sup>402</sup> contends that the philosophy behind the economic history of Nigeria is based on 'Competitive Capitalism', and Schatz<sup>403</sup> identifies varying typologies of capitalism in Nigerian Economic development. The role of socialism in regulatory intervention in Nigerian financial system can not be overstated.

An additional significant reason was the intellectual and theoretical influences of some Western thinkers<sup>404</sup> who challenged the efficacy of the traditional tools of control in developing countries. It is apposite to recall at this point that when Loynes was preparing the CBN Ordinance he was confronted with the issue of empowering the central bank with unorthodox weapons specially designed to meet Nigerian circumstances. He vehemently rejected the idea<sup>405</sup>. This regulatory dispensation was to avoid the monumental disaster which unorthodox regulatory tools had wrought in some European States.

Another prominent intellectual thinker with considerable influence on Nigerian banking regulation is Dr.Charles.V. Brown who in his 'The Nigerian Banking System' labels the objectives of the CBN as one of the most conservative in the Commonwealth and explicitly expresses his major bias as the willingness to try unorthodox measures - what Loynes called 'rash experiments'<sup>406</sup>. He doubted the efficacy of moral suasion in Nigeria in the absence of more powerful weapons and indicated the ineffectiveness of

<sup>401</sup>. See Ekundare, Olufemi. R., *An Economic History of Nigeria 1860 - 1960*. ( Methuen & Co. Ltd, London, 1973 ) p. 384.

<sup>402</sup>. Ibid., p. 383.

<sup>403</sup>. See Schatz. Sayre. P., *Nigerian Capitalism*, ( University Of California Press, Berkeley. Los Angeles, London, 1977 ) Chapter one.

<sup>404</sup>. Professor R. S. Sayers was a leading figure in this circle. See Sayers, R. S., *Central Banking After Bagehot*, Oxford University Press, London. (1958).p. 113.

<sup>405</sup>. Loynes concluded that " (T)o give the Central Bank a wide framework does not mean that it need or should possess an arsenal of arbitrary weapons to interfere in the delicate and efficient mechanism of payments..... Nor would there be a case for rash experiments.....". See Loynes. J. B., op. cit p. 4.

<sup>406</sup>. See Brown, C. V.. op. cit., p. 171.

traditional tools in CBN legislation. The traditional methods of financial regulation were also perceived as unsuitable to the peculiarities of the developing countries<sup>407</sup>.

This discussion of the intellectual influences on the Nigerian banking regulation can not be concluded without pointing to the inspirational motivation of Lord Keynes' writings on Nigerian regulators. The Keynes' faith in legal coercion of banks found favours with the enthusiastic regulators<sup>408</sup>. It is therefore not out of place to see commentators rightly contending that "Nigerian Economy was highly regulated in line with the Keynesian Economics "<sup>409</sup>.

It may be added as a last line that the civil war unleashed on Nigerians by an uncouth military class must have accentuated the emergence and hegemony of financial repressive measures since all the regulatory infrastructures were erected during these unfortunate period.<sup>410</sup> However, it appears that the war was merely incidental to the reign of repressionism as the preparation had been commenced much earlier, and the government made no pretence to use repressionism as an emergency measure only. It was conceived as the normal mode of financial regulation in Nigeria adopted under the guidance of US advisors<sup>411</sup>.

<sup>407</sup>. See Twenty Years Of Central Banking In Nigeria. op. cit., pp.100 - 101.

<sup>408</sup>. For Lord Keynes preference for legislative coercion of banks or coercion through public opinion, see Harrod, R. F., The Life of John Maynard Keynes, Pelican biographies, Pelican Books,(1972) p. 451.

<sup>409</sup>. See Yahaya, M. I., " The Changing Roles And Functions Of The Banking Industry In A Developing Economy " in The Nigerian Banking And Finance Industry In Transition : Shaping The Future. op. cit., p. 88.

<sup>410</sup>. The Nigerian civil war was between 1967 and 1970.

<sup>411</sup>. One may underscore the influence of the Federal Reserve System ( FED ) which supplied the bulk of the research advisors of the CBN in its formative years. The consequent adoption of a FED style of regulation should therefore not come as a surprise since it merely served as a pointer to the efficiency of the US advisors already tutored in such regulatory extraversion. See Brown, C. V., op. cit p. 142.



## 4.7 Conclusions

The financial regulation of the Nigerian banks was originally laissez-faire at the point of banking evolution in 1892, before the sporadic failure of indigenous banks instigated the era of minimalist regulation in 1952. The unabated failure of the banks, and the political agitation for independence culminated in the era of liberal regulation of the banks in 1958. The era of liberal regulation achieved its purpose because bank failure was exterminated in the country. However, the era of liberal regulation later capsized to another era of banking interventionism in 1968.

The era of bank interventionism marked the entire period of post independent Nigeria between 1968 and 1991. The era which inundated the banking system with far-reaching repressive regulations was influenced by diverse factors. These included the intellectual instigation of the classical theorists and their cohorts, the growth of economic nationalism and socialism in the country, the influence of the US advisors, the emergence of the Nigerian civil war and the socio-political milieu of the Nigerian society.

The combination of these factors invested the Nigerian banking system with the repressive regulations that produced results which are the focus of the next chapter.

## **CHAPTER V**

### **NIGERIAN BANKING REGULATORY NORMS AND THEIR EFFECTS (1960-1985) : A REFLECTION ON THE PRE-LIBERALISATION ERA**

#### **5.1 Introduction**

The preceding chapter has outlined the historical circumstances and factors which influenced changes in financial regulatory mechanism in Nigeria from laissez-faire to interventionism. The aim of this chapter is the analysis of the specific financial regulatory norms and their effects on the Nigerian banking system which respected bankers<sup>412</sup> described as "the most regulated of all the economic sector"<sup>413</sup> in the country. This chapter attributes inefficiencies and inadequacies of the banking system to factors which were induced by governmental regulations. These factors consisted of deficit financing, low interest rates' structure, reckless and totally irresponsible governmental fiscal operations and gross inefficiencies of credit guidelines - the principal instrument of regulation. The regulatory measures often had conflicting objectives and unpalatable results. The regulatory setting of the banks affects not only their contributions to the national developmental objectives, but substantially determines the level of their competitiveness and performance.

The chapter contains nine sections. Section one is the introduction. Section two discusses the regulatory structure of the Nigerian banking system. Sections three to seven

<sup>412</sup>. See Nwankwo, G. O., *Prudential Regulation Of Nigerian Banking*. University of Lagos Press. Lagos. (1990). see also Adekanye, Femi. A., " Major Developments and Innovations in the Nigerian Financial Environment Since 1960 " in *Innovations, Technology & the Nigerian Finance Sector, Papers and Proceedings of the Bank Directors' Seminar*. 1990. ( Financial Institutions Training Centre. Lagos, Nigeria, 1990 ) p. 14.

<sup>413</sup>. See Olashore, op. cit p. 126.



highlight the effects of banking regulations, in particular interest rate regulation, credit control rules, ownership rules, foreign exchange rules, and governmental borrowing from the banking system. A critical assessment of the era of banking interventionism was undertaken in section eight. The conclusions are contained in section nine

## **5.2 The Regulatory Structure of the Nigerian Banking System**

The importance of the Central Bank of Nigeria in the pre -adjustment era lies in its position as the premier institution and acme of the financial sector. The Board of the Bank was endowed with the power of formulation and implementation of monetary and banking policy<sup>414</sup> which was subject to the direction of the Federal Executive Council in case of conflict between the board and Minister of Finance on a proposed policy<sup>415</sup>.

Section 3 of the Central Bank of Nigeria Act<sup>416</sup> provided as follows:

- (1) The board shall keep the Commissioner informed of the monetary and banking policy pursued or intended to be pursued by the Central Bank.
- (2) The Commissioner shall, from time to time if he disagrees with the board on the monetary and banking policy pursued or intended to be pursued by the Central Bank, so inform the board of his disagreement thereto, and the Commissioner may submit his representation and that of the Central Bank on the disagreement to the Federal Executive Council
- (3) The Federal Executive Council may in writing after considering the representations direct the Central Bank as to the monetary and banking policy pursued or intended to be pursued and the direction shall be binding on the board which shall forthwith take all steps necessary or expedient to give effect thereto.

This regulatory structure weakened the authority of the CBN since the final authority for monetary and banking policy was with the Federal Executive Council <sup>417</sup>.

<sup>414</sup> . See S .3 (1) of the Central Bank of Nigeria Act (amendment) (No.3) Decree No. 50 of 1968.

<sup>415</sup> . See S. 3 (2 ) & (3 ), *ibid*.

<sup>416</sup> . See Central Bank of Nigeria Act (Amendment) (No.3) Decree No. 50 of 1968.

<sup>417</sup> . See Section 3 ( 3 ) of the Central Bank of Nigeria Act ( Amendment ) ( No. 3 ) Decree No. 50 of 1968.

The subservient position of the CBN is illustrated by the fact that the CBN usually submitted its monetary proposals and other related matters fiscal proposals for the consideration of the Ministry of Finance during the latter's annual budgetary exercise<sup>418</sup>.

The predominant control of the CBN by the Federal Government and the Ministry of Finance which often treated the Bank as one of its departments<sup>419</sup> had led to the CBN being "involuntarily compelled to take on such functions that are neither of monetary or developmental nature in recent years all of which have tended to overshadow its primary function of monetary management "<sup>420</sup>.

The CBN regulatory and supervisory powers were further undermined by a number of institutional and functional weaknesses embedded in the system. The regulatory authority of the CBN over the banking system was not pervasive. Some banking institutions were excluded<sup>421</sup> from the operations of the Banking Decree and the supervision of the CBN on the grounds of their specialisation even though they performed essentially banking activities. Only commercial and merchant banks were under the supervisory jurisdiction of the CBN. The specialised banks had various Ministries as their supervisory authorities. The following table demonstrates the relationships :

Table 1

REPORTING RELATIONSHIP OF NIGERIAN BANKS

Banking Institution	Supervisory Institution
Nigerian Industrial Development Bank	Ministry of Commerce

<sup>418</sup>. See 'Twenty Years Of Central Banking In Nigeria, op. cit., p. 146.

<sup>419</sup>. See Nwankwo, G. O., The Nigerian Financial System, op. cit., p. 15.

<sup>420</sup>. See Falegan, S. B., " Restructuring Nigeria's Financial System For Economic Recovery " in National Economic Recovery, p. 85.

<sup>421</sup>. See Section 38 of the Banking Decree No. 1 of 1969.



Nigerian Bank for Commerce and Industry	Ministry of Commerce
Nigerian Agricultural and Cooperative Bank	Ministry of Agriculture
Federal Mortgage Bank of Nigeria	Ministry of Work
Federal Savings Bank	Ministry of Finance
Commercial and Merchant Banks	Central Bank

(Source : Nwankwo, G. O., " The Structure Of The Nigerian Economy And The Nigerian Banking Environment " in National Economic Recovery, op. cit. p16)

This table shows the relative influence of the CBN and that the Bank cannot effectively oversee the whole banking sphere due to the institutional structure with the attendant conflict of directions to the different banks from their different supervisory authorities often in direct violation of the CBN monetary guidelines.

Besides this conflicting supervisory authorities, the CBN even in its sphere of operation lacked the necessary powers and facilities essential for the performance of its regulatory and supervisory roles. The CBN had no power to conduct special banking examination<sup>422</sup>, or grant<sup>423</sup> and withdraw<sup>424</sup> banking licences on its own rights without the express authority of the Minister of Finance. It cannot discipline any bank staff or bank board for banking malpractice. Although, the CBN usually submitted its examination reports to the Ministry of Finance and the management of the concerned bank, it had no control over the form in which such examination reports may be presented to the bank board<sup>425</sup>.

<sup>422</sup>. See Section 21 of Banking Decree No. 1 of 1969.

<sup>423</sup>. See Section 2 *ibid*.

<sup>424</sup>. See SS.3 and 8 *ibid*.

<sup>425</sup>. *Ibid.*, pp. 24 & 25.

With respect to periodic banking examination by CBN, a former executive director of the CBN comments that " (A)lthough the Bank aims at examining a bank at least once in twelve months, it scarcely does so once in twenty-four months "<sup>426</sup>.

This portrait of the apex of the banking system in Nigeria and its political and administrative subjugation provides an indispensable pillar to any objective analysis of the impact of financial regulation on the banking system, and serves as an appropriate point to assess the effects of specific regulatory norms on the banking system.

### **5.3 Interest Rate Regulation**

The interest rate charged by the Nigerian banks was not made a subject of specific regulation<sup>427</sup> until 1962 when an inserted section 7(4) of the 1958 Banking Ordinance<sup>428</sup> provided that rates of interest charged on credit facilities and advances by the banks shall be linked to the minimum rediscount rate of the Central Bank subject to a stated minimum rate of interest. The law further made the approval of the Central Bank a precondition for the interest rate structure of each bank and stipulated that "the minimum rate of interest when so approved shall be same for all licensed banks"<sup>429</sup>.

Section 14 of the 1969 Banking Decree which replaced the above provision provided :

- (1) The rate of interest charged on advances, loans or credit facilities or paid on deposits by any licensed bank shall be linked to the minimum rediscount rate of the Central Bank subject to stated minimum and maximum rates of interest, and the minimum and maximum rates of interest when so approved shall be the same for all licensed banks.
- (2) The interest rate structure of each licensed bank shall be subject

<sup>426</sup>. Ibid., p. 25.

<sup>427</sup>. Prior to 1962, the interest rate structure in Nigeria was adjusted to the rediscount rate of the Bank of England without regards to the local circumstances.

<sup>428</sup> . See Banking Amendment Act No. 19 of 1962 which amended the 1958 Banking Ordinance. For a short discussion of the impact of financial regulation on Nigerian banking system, see Seidman, A., Money, Banking & Public Finance in Africa, Zed Books Ltd, London.(1986), pp. 77 - 83.

<sup>429</sup> . Ibid.



to the approval of the Central Bank.

In 1970, a proviso<sup>430</sup> was added to section 14 which allowed differential rates of interest to be approved for the various categories of banks.

This regulatory structure made interest rate liable to direct management by the government under the expertise of the monetary authority<sup>431</sup>. The CBN administered the interest rates by stipulating the ranges within which both the deposit and the lending rates are to be maintained. The regulation of interest rates was predicated on the needs to reduce debt servicing burden of the government, ensure socially optimum allocation of resources in the context of low inflation and smooth financial markets development.

In March, 1970 the CBN stipulated for the first time the minimum and maximum rates on advances and loans<sup>432</sup>. Since then the mechanism had been firmly established and entrenched in Nigerian financial regulatory culture. The interest rates fixed by the CBN however had been at a persistently " unrealistically low level "<sup>433</sup>.

According to the CBN<sup>434</sup> for fifteen years (1960 - 1974) the rediscount rate changed only five times and within a very narrow range of between 4 and 5 1/2 %. The deposit rates fixed at 2 1/2 - 5 % for all types of financial institutions was described as "the most unrealistic low levels which could not be expected to stimulate saving mobilisation"<sup>435</sup>. Apart from 1964 when the interest rate was raised all the changes until

<sup>430</sup> . See the Banking ( Amendment ) Decree No.3 of 1970.

<sup>431</sup>. See Twenty Years Of Central Banking In Nigeria. op. cit., p. 102.

<sup>432</sup>. The rates were fixed at 2 1/2% and 7 1/2% minimum and maximum respectively. above the rediscount rate of the Central Bank and 1 1/2 % below and 1 1/2 % above the minimum rediscount rate as the minimum and maximum respectively on interest bearing deposits see Okigbo, P. N. C., Nigeria's Financial System : Structure And Growth, Longman Group, London,(1981) p. 69.

<sup>433</sup>. See Twenty Years Of Central Banking In Nigeria. op. cit., p. 124.

<sup>434</sup>. Ibid., pp. 124 - 125.

<sup>435</sup>. Ibid., p. 125.

1976 were downwards. The relatively low interest rates in Nigeria with occasional small changes since 1970 till 1980 is illustrated in Appendix I.

The absurdly low interest rates<sup>436</sup> in the 1970s and 1980s may be contrasted with the early 1960s when the interest rates in Nigeria were comparable to the level of interest rates in Great Britain and Germany and higher than what obtained in Switzerland<sup>437</sup>. It was not surprising as the CBN observes that the low rates failed to stimulate saving mobilisation<sup>438</sup>, since given the existence of high traditional rates of interest at the informal market "(O)nly a rapid increase in savings invested through money or capital markets, where the return is seen and calculated, can break the iron grip of usurious rates"<sup>439</sup>.

A leading banker put it more bluntly that "a major disincentive to saving in this country is the low rate of interest allowed to be paid on deposits. With such low rates, it is better for a person to buy imported product, which he knows will cost him 20% in a year's time, than keep the money in a savings account and earn 9 1/2 % per annum."<sup>440</sup> The interest rate structure favoured present consumption rather than postponement or future consumption.

The low interest rate was an underpricing of a relatively scarce capital and made the cost of borrowing rather cheap in Nigeria with attendant profligacy and corporate preference for debt as opposed to equity finance<sup>441</sup>. It also prevented the rapid growth of

<sup>436</sup>. In the fiscal years of 1976- 1978, the prescribed range of banking lending rates was 6 to 10 per cent, but with a ceiling of 8 per cent on credit to the preferred sectors of the economy. An adjustment was made in 1978/1979 when the range was increased to 7- 11 per cent. Some sectors and activities enjoyed preferential rates hence in 1978 and 1979 fiscal years banking lending for residential building construction and agricultural production had a fixed interest rate of 6 per cent, whilst 4 - 6 per cent interest rate was prescribed for government guaranteed credit to the agricultural sector.

<sup>437</sup>. See Jucker-Fleetwood, *op cit.*, p. 234.

<sup>438</sup>. See Twenty Years Of Central Banking In Nigeria, *op. cit.*, p. 125.

<sup>439</sup>. See Jucker-Fleetwood, *op.cit.*, p. 107.

<sup>440</sup>. See Olashore, *op.cit.*, p.125.

<sup>441</sup>. *Ibid.*, p. 15.



money and capital markets since low interest rates on government debts failed to attract private sector savers<sup>442</sup> and the prohibition of interest payment on demand deposits forced banks to engage in non-price competition in form of locations, buildings, and facade<sup>443</sup>.

A principal motivating factor underlining the policy of low interest rate in Nigeria in the words of the CBN was "to minimise the cost of borrowing to the government"<sup>444</sup> which clearly meant provision of cheap money for government financing . This policy had been condemned by the CBN as "largely conducive to inflationary monetary expansion"<sup>445</sup> because low prized government instruments failed to attract private sector savers, and the CBN had a legal obligation to absorb the unsubscribed proportion of the unmarketable instruments hence "substantial high -powered money was usually injected into the economy." <sup>446</sup>

The deleterious effects of interest rate regulation were so patent that Agu concludes "it is ..... clear that there has been a great measure of financial repression in the Nigerian economy. Such repression, working through negative real rates , poses important macroeconomic questions concerning the ability of the economy to accumulate financial assets, the volume of national savings and investment, the efficiency of investment and the allocation of resources"<sup>447</sup>. The effects of interest rate regulation confirms the thesis of

<sup>442</sup>. See Ojo, M. O., The Evolution And Performance Of Monetary Policy In Nigeria In The 1980s,(Central Bank of Nigeria, Research Department Occasional Paper No. 2, Lagos, February 10, 1992), p. 9.

<sup>443</sup>. See Okigbo, P. N. C., Nigeria's Financial System. op. cit., p. 110.

<sup>444</sup>. See Twenty Years Of Central Banking In Nigeria, op. cit., p. 86.

<sup>445</sup>. Ibid.. p. 125.

<sup>446</sup>. See Ojo, M. O., op. cit., p. 9.

<sup>447</sup>. See Agu, C. C., Nigerian Banking Structure And Performance. ( Research Monographs in Banking and Finance No.3, Institute Of European Finance, University College Of North Wales, Bangor, 1987 ) p. 26.

Mckinnon-Shaw development theory of regulatory repressionism that interest rate ceilings discourage savings and encourage capital flight.

The most objectionable aspect of this pervasive price regulation is its presentation as a regulatory measure, which according to the CBN " remains an ineffective instrument of monetary regulation in Nigeria"<sup>448</sup>. A much greater cost of low interest rate structure in Nigeria according to Professor Nwankwo was that it "has certainly encouraged capital flight from the country in quest of higher interest earnings overseas"<sup>449</sup>.

#### **5.4 Credit Regulation**

Credit regulation through credit guidelines dictating the rate of credit expansion by the banking sector and prescribing the minimal and maximal credit for sectoral allocation was the most popular of the monetary control techniques utilised by the CBN<sup>450</sup>. The credit and lending operations of the banks were made subjects of explicit regulation by the Central Bank. Section 2(1) of Central Bank of Nigeria Act (Amendment) (No.3) of 1968 stipulated that the " Central Bank may, after consultation with the Commissioner prescribe a minimum ratio of total loans, advances and discounts, granted to indigenous persons, to be maintained by each bank licensed under the Banking Act".

The Central Bank also possessed the powers by virtue of section 40 of its enabling law<sup>451</sup> of requiring banks to submit for prior approval loans applications exceeding stated amounts, and to fix ceilings on the volume or aggregate amount of loans, advances and discounts outstanding or granted by any bank<sup>452</sup>.

<sup>448</sup>. See Twenty Years Of Central Banking In Nigeria, op. cit., p. 122.

<sup>449</sup>. See Nwankwo, G. O., The Nigerian Financial System, op. cit., p. 36.

<sup>450</sup>. See Twenty Years Of Central Banking In Nigeria ,op. cit., p. 105.

<sup>451</sup> . See The Central Bank of Nigeria Act Cap 30 Laws of Federation of Nigeria and Lagos as amended by the Decree No. 50 of 1968 and Decree No. 4 of 1969 respectively.

<sup>452</sup> . See The Central Bank of Nigeria Act Cap 30 Laws of Federation of Nigeria and Lagos as amended by the Decree No. 50 of 1968 and Decree No. 4 of 1969 respectively.



The credit guidelines were designed with a specific goal of providing for the financing needs of the Nigerian Government<sup>453</sup>, and also with the aim of ensuring an acceptable rate of credit expansion with emphasis on directed credit to production, and reduced credit to the distributive trade sectors. Assertions that Nigerian banks especially the foreign ones had neglected the productive sectors in preference to import trade<sup>454</sup> were invoked to justify adoption of this regulatory instrument.

Two variants of credit regulation had been adopted by the CBN namely credit ceilings and sectoral credit allocation<sup>455</sup>. Within this context the credit ceilings on the commercial banks had witnessed serious fluidity and rampant variations between 1969 and 1985 financial years<sup>456</sup>. Additionally, these ceilings were not pervasive since exceptions were granted in certain respects<sup>457</sup>.

The sectoral allocation and selective controls aspects of the credit guidelines were in theory designed, inter alia, to direct credit to the directly productive sectors, indigenous

<sup>453</sup>. See Ojo, M. O., op., cit p. 21.

<sup>454</sup>. See Otiti, A. O. G., " Position of the Central Bank in the economy " Bullion, 5, 2 ( April/June 1980 ) 23 at p. 26.

<sup>455</sup>. The first variant involved overall and sectoral ceilings stipulating the rates of change for the aggregate and components of banks' loans and advances whilst the second variant specified sectoral distribution of credit with positive discrimination in favour of productive activities as against non-productive sectors.

<sup>456</sup>. In the fiscal year of 1969/70, the permissible rate of increase in commercial bank credit was stipulated as 10 per cent .This ceiling rate was raised to 20.0 per cent in 1970/71 but reduced to 8.4 per cent in 1971/72 fiscal years respectively. Between March 1972 and April 1976 the credit guidelines were confined to sectoral rationing of bank credit without imposition of aggregate ceilings. The credit ceiling rate for 1976/77 and 1977/78 fiscal years was fixed at 40 per cent in both periods save that in the latter year the application of the credit ceiling and guidelines was extended to the merchant banks. A downwards revision of the ceiling rate to 30 per cent occurred in 1978/79 fiscal year. The 30 per cent credit expansion ceiling was maintained in 1980 to 1982 , but by 1985 the ceiling was pegged at 7 per cent.

<sup>457</sup>. See Ojo, M. O., op. cit., p. 11. The exemptions were in respect of bank loans for purchase of certain motor cars, and purchase of shares under the indigenisation programme by Nigerians, and in respect of agriculture, and residential building construction loans. Additionally, new and small banks were allowed to exceed the general ceiling either in the form of a slightly higher credit ceiling or as a proportion of their total deposit liabilities.

businesses, small scale enterprises and the rural areas . Within this purview, sixteen sectors and subsectors were identified and classified into preferred and less preferred sectors with an omnibus miscellaneous class. The details of the classifications and specific allocation between 1969 and 1985 can be found in Appendix X herein. The Appendix reveals that in the fiscal years 1972 -1974, the production and services sectors were allocated a minimal 45per cent and 11 per cent of banks' aggregate loans and advances respectively. The rates<sup>458</sup> were reviewed to 48 per cent and 10 per cent respectively in 1975/76.

In 1979/80 and 1980/81, the stipulated total minimum allocation for the preferred sectors was increased to 70 and 75 per cent respectively and the less preferred sectors experienced corresponding reduction in maximum allocation from 30 per cent to 25 per cent. The percentage of the preferred sector had increased by 1985 to 79 per cent. The prescribed proportion of total loans and advances assigned to indigenous borrowers was increased from 35 per cent in 1971/72 to 80 and 90 per cent respectively in 1982 and 1984.

The assessment of these broad and penetrating directional credit control measures shows that they have been largely unsuccessful in line with the predictions of Mckinnon-Shaw hypothesis. The guidelines have been attacked as broad, confusing and easily manipulated.<sup>459</sup> Indeed, the CBN admitted the existence of loopholes<sup>460</sup>. The classification of the sectors under the practice is imprecise and easily evaded by banks since "this becomes a semantic problem and the banks get around this by classifying as best the .....

<sup>458</sup>.Conversely, the less preferred sectors of general commerce and 'others' were allotted regulatory maxima of 30 per cent and 12 per cent in 1972 -74 respectively while in 1975/76 witnessed the reduction of ' others' category to 10 per cent. The subsequent years of 1976/77 to 1978/79 had no material departure from the preceding allocation structure.

<sup>459</sup>. See Agu, op. cit., p. 102.

<sup>460</sup>. See Twenty Years Of Central Banking In Nigeria, op. cit., p. 120.



loans they have given without , indeed anyone being able to successfully challenge their classification ."<sup>461</sup>

The sectoral classification under the guidelines also discriminated in favour of large scale enterprises because " (I)t is common knowledge that in all the sectors referred to in the guidelines, the larger scale enterprises have a built-in advantages in securing credit from the commercial banks....."<sup>462</sup>. Despite the guidelines, small scale enterprises have received inadequate financing , yet loan finance was the best finance source for them<sup>463</sup>.

The guidelines have also fostered antagonism between the banks and the CBN since the banks were divested by the directed credit measure from their normal and profitable operations that they understood well into areas where other and different institutions normally specialise<sup>464</sup>. The banks were rendered unable to accommodate profitable lending requests where such request ran a foul of the monetary policy guidelines.

The enforced compulsory lending to sectors often adjudged unprofitable by banks had led to continued resistance to abide by the credit guidelines by bankers, who often preferred the payment of fines to compliance<sup>465</sup>. The former Governor of CBN attested to this persistent negative deviations from the credit guidelines and sectoral allocation stating that " the performance of the banks with regards to guideline stipulation on sectoral allocation has not been very impressive. Loans to such vital sectors as agriculture, exports

<sup>461</sup>. See Okigbo, P. N. C.. *Nigeria's Financial System*, op. cit., p. 62.

<sup>462</sup>. Ibid., p. 64.

<sup>463</sup>. See Olashore. op. cit., p. 65.

<sup>464</sup>. See Okigbo, Pius., *Essays in the Public Philosophy of Development*, op.cit., p. 169.

<sup>465</sup>. See Nwankwo. G. O.. " The Structure Of The Nigerian Economy And The Nigerian Banking Environment" in *National Economic Recovery*, op. cit., p. 24.

and small-scale enterprises have persistently fallen below their stipulated minima while loans to the less productive sectors have always been above prescribed maxima ."<sup>466</sup>

A number of other serious defects of the directed credit measures have been acknowledged. Bankers pointed to the fact that previous directed lending "against prudent credit judgement of the banks have not in the past proved successful or beneficial to the economy"<sup>467</sup>. The massive diversion of fungible funds by favoured borrowers, and inefficient public corporations, into non productive consumption purposes had been recognised even by the CBN<sup>468</sup>. Apart from credit regulation, the banks were also under massive restrictions regarding the permissible banking activities<sup>469</sup>. The totality of the serious problems which bedevilled this predominant financial regulatory instrument<sup>470</sup> forced the CBN to conclude :

Apart from the fact that the banking system failed on a number of occasions to attain full compliance with the various CBN credit guidelines, the problem of " window dressing " in the figures of their credit operations cannot be ignored . More importantly, there is the problem of inability to control the ultimate use into which a borrowed fund may be put. The mere prescription of a sectoral distribution of credit may not ensure that funds borrowed for production cannot be applied for consumption expenditure<sup>471</sup> .

<sup>466</sup>. See Closing Address By Alhaji Abdulkadir Ahmed, Governor, Central Bank Of Nigeria, at the Seminar for Bank Directors And Chief Executives in the Public And Private Sectors, in *National Economic Recovery*, op. cit., p. 123.

<sup>467</sup>. See Olashore, op. cit., p. 69.

<sup>468</sup>. See *Twenty Years Of Central Banking In Nigeria*, op. cit., p. 105.

<sup>469</sup>. See generally s. 13 of Banking Decree No. 1 of 1969 as amended by the Banking (Amendment) Decree No. 3 of 1970 and Banking ( Amendment ) Decree No. 88 of 1979.

<sup>470</sup>. Besides credit regulation, the compulsory holding of government securities had also restricted banks' lending ability. Prior to 1969, banks were required to maintain certain minimum holdings of liquid assets, but were free to hold these assets in any of a number of approved forms , one of which was Treasury Bills. After 1969, compulsory holding of Treasury Bills as part of liquid assets became the rule under the ensuing repressive regime. In 1973, the banks were required to hold at least 40 per cent of their liquid assets in Treasury Bills and Treasury Certificate and call money.

<sup>471</sup>. Ibid., p. 127.



## 5.5 Indigenisation Decree and Government ownership

Indigenisation described as the policy of extending Nigerian ownership and control by government fiat or pressure, through the employment of government leverage either to exclude or evict foreign concerns from certain fields of economic activity or to require direct sale of partial or complete ownership of existing foreign firms<sup>472</sup>, has a long history<sup>473</sup> in Nigeria.

Prior to 1977, a liberal and non discriminatory rule was operative in respect of banking business such that any person irrespective of the nationality may own and operate a banking institution in Nigeria. The rule however changed in 1977 when section 5 of the Nigerian Enterprises Promotion Decree<sup>474</sup> stipulated that subject to the Decree " as from the appointed date no alien shall be the owner or part-owner of any of the enterprises specified in Schedule 2 to this Decree unless the equity participation of Nigerian citizens or associations in the enterprises is not less than sixty *per cent*". Banking<sup>475</sup> was included in the specified enterprises. As a result of this ownership requirement, the foreign banking corporations in Nigeria had their ownership nationalised, and in fact one withdrew its operations from the country<sup>476</sup>.

This change in ownership rule had its effect in the public ownership of most banking corporations in Nigeria since the Federal Government under the guise of the Decree acquired majority share holdings in the expatriate banks. The Federal Government compulsorily acquired 40 per cent equity in 3 major foreign banks and later increased the

<sup>472</sup>. See Schatz, op. cit., p. 58.

<sup>473</sup> It can be traced to 1949, when the policy of the colonial government was to ensure " maximum participation by Nigerians themselves " in the trade and industry of the country.

<sup>474</sup> . See Decree No.3 of 1977.

<sup>475</sup> . See specifically Item No.1 in Schedule 2 of Decree No.3 of 1977 .

<sup>476</sup> . The First National City Bank of New York.

level to 60 per cent in the said 3 major banks and the remaining 7 foreign banks<sup>477</sup>. The ownership structure of banks with the Federal Government participation is illustrated in Appendix VI.

The dominance of public ownership becomes vivid when it is considered in the context of the fact that State Government also had majority interests in most of the indigenous banks, and established new banks after 1977. Of the 19 commercial banks in the country in 1978, State Governments had majority share holding in 13. The ownership structure had an important implication for the banks in that their management, control and policies were brought under the direct influence of the Government.

Government acquisition of ownership interests in the banks was predicated on the need " for the government to get intimately involved in commercial banking activities so as to guide them to operate to the maximum benefit of the economy . This is as much in their own interest , as it is in the interest of the country "<sup>478</sup>. An objective inquiry into the effects of government ownership will reveal that such ownership had neither been in the interest of the banks nor of the country as a whole.

The immediate effect of the indigenisation of the banking sector was the complete governmental ownership of the Nigerian banking industry since only one bank , Societe Generale Bank Limited was not wholly or principally owned by either the Federal or State Government<sup>479</sup>. In the periods after indigenisation, the banking industry in Nigeria became a public sector industry and the Federal Government not only exercised a regulatory role but also a participatory role with "occasional conflicts of interest manifesting themselves in the management of the economy"<sup>480</sup>.

<sup>477</sup>. See Nwankwo, G. O., " The Structure Of The Nigerian Economy And The Nigerian Banking Environment" op. cit., p. 17.

<sup>478</sup>. See 1973/4 Budget Speech of the Federal Government Of Nigeria.

<sup>479</sup>. See Nwankwo, G. O., " The Structure Of The Nigerian Economy And The Nigerian Banking Environment" op.cit., p. 17.

<sup>480</sup>. See Ogunbanjo, C. O., Nigeria - The Search For Economic Stability, op. cit., p. 32.



The ascendancy of mediocrity on banking Boards was the first problem that the indigenisation and ownership programme gave the Nigerian banking industry. The appointments to the Board of banks under the purview of the government were often devoid of any meritorious standard. Okigbo asserts that such appointments were based on horse trading "with persons appointed to the Board who may not be fit as candidates for a minor clerk's office in the bank on whose Board they are appointed to sit"<sup>481</sup>.

The appointments were thoroughly politicised and based on mundane issues as federal character<sup>482</sup> or geographical representation. The government appointees regarded such appointments as conduits to achieve" purely personal objectives "<sup>483</sup>.

These political and self motivated Boards often put bank management under intolerable interference in their pursuits of personal enrichment, power and influence<sup>484</sup>. The intimidation and coercion of bank management and top executive by Board members and the associates of the government like public functionaries, members of the armed forces, or political parties who relied on the majority holdings of governments in banks had been blamed for a large percentage of the bad debts of many Nigerian banks<sup>485</sup>. It has been averred that " the bulk of the bad and doubtful debts which our banking industry is saddled with today were incurred "<sup>486</sup> during the second Republic due to the politicisation of the banks' Boards.

<sup>481</sup>. See Okigbo, Pius., *Essays in the Public Philosophy of Development*, Vol.3, op. cit., p.222.

<sup>482</sup>. See S. 14 ( 3 ) of the Constitution of the Federal Republic of Nigeria 1979.

<sup>483</sup>. See Olashore, op. cit., p. 113.

<sup>484</sup>. See Giwa, R. F., " The Role of Bank Directors in the 1990s " in *Innovations, Technology & the Nigerian Finance Sector*, op. cit., p. 65.

<sup>485</sup>. Ibid., p. 45.

<sup>486</sup>. See Giwa, R. F., op. cit., p. 65

Another effect of government ownership of the banks has been the instability and fluidity of the membership of banks' Boards and the management<sup>487</sup>. There had been manifest job insecurity with serious negative impacts on the banks as appointments and their retention were based on politicking, lobbying and pressure groups rendering managers susceptible to undue influence and pressure. Thus, favours were shown by way of loans granted to influential individuals, often without adequate security, resulting in irrecoverable debts.

The ownership structure in great measure facilitated the granting of loans to ambitious government projects of doubtful viability<sup>488</sup> and increased funding of prestigious projects of statutory corporations and banks "placed large amounts of " soft-credit " at their disposal - with few questions asked, and few strings attached"<sup>489</sup>.

In this respect, it is apposite to recall that the indigenisation scheme affected banks in two important ways. They were the financiers of indigenisation and were simultaneously indigenised themselves<sup>490</sup>. With regard to their former role, the banks were directed to extend credit to individuals for the purchase of shares in industries which were the subject of indigenisation even though the long-term viability and profitability may not be easily identifiable under the condition of urgency in which the scheme was implemented. The CBN authorised the banks to exclude loans granted for the purchase of shares in computing their permissible credit growth limit under the monetary policy guidelines<sup>491</sup>.

<sup>487</sup>. See Sanusi, J. O., " Developments In The Banking And Finance Industry : Institutional Framework 1970 To Date - Changes In Ownership Structure " in *The Nigerian Banking And Finance Industry In Transition : Shaping The Future*, op. cit., p. 18.

<sup>488</sup>. Ogunbanjo, C. O., *Nigeria - The Search for Economic Stability*, op. cit., p. 32.

<sup>489</sup>. See Olashore, op. cit., p. 191.

<sup>490</sup>. See Olashore, op. cit., p. 12.

<sup>491</sup>. Loc. cit.



Perhaps it may be underscored that the indigenisation loans went mainly to the politically influential, strategically located or wealthy Nigerians. Hence, the indigenisation was "a windfall for a sprinkling of fortunate Nigerians"<sup>492</sup> who were aided in the acquisition of private properties by public funds. The ancillary effects of indigenisation and government ownership of banks include the bureaucratisation of the banking industry<sup>493</sup>, lax supervision and withdrawal of foreign investment in Nigerian banking industry<sup>494</sup>.

It has been argued that there is no "rational justification for the Federal Government's participation in the bank's equity"<sup>495</sup>. Indeed, private pecuniary interests of cheap loans, office perquisites, board membership or management appointment, and nothing else underlie the continued governmental participation in banking ownership in Nigeria. The political factors underlying the problems of banks are captured by the conclusion that "(F)inancial system in Nigeria lacked autonomy and suffered from illiquidity and insolvency due to political interference resulting in poor management and bad loans."<sup>496</sup>

## **5.6 Exchange Control Measures**

Exchange control regime is a British legacy introduced in 1939 . In 1962, the Exchange Control Act enacted this regulatory instrument into Nigerian law. The pre-liberalisation legal regime was characterised by a stringent exchange control law<sup>497</sup> which prohibited the buying, selling, borrowing, lending or dealing in foreign currency by any

<sup>492</sup>. See Schatz, *op. cit.*, p.60.

<sup>493</sup>. See Ogunbanjo, C. O., *Nigeria - The Search for Economic Stability*, *op. cit.*, p. 34.

<sup>494</sup>. *Ibid.*, p. 16.

<sup>495</sup>. *Loc. cit.*

<sup>496</sup>. See Bevan, David., et al. *op. cit.*, p. 49.

<sup>497</sup> . See Exchange Control Act No. 16 of 1962.

person other than an authorised dealer except with the permission of the Minister of Finance<sup>498</sup>. The law prescribed the compulsory surrender of foreign currency by residents to authorised dealers through mandatory sale of any acquired foreign currency<sup>499</sup>. It further banned ownership of offshore financial assets by residents<sup>500</sup>, and proscribed dealing in Nigerian securities by foreigners<sup>501</sup>. Specifically, Nigerian residents were prohibited from lending money or securities to any resident foreign controlled corporation<sup>502</sup>. There was effective restriction on capital movement in respect of current and capital accounts transactions.

Nearly all types of foreign currency payment required the permission of the Minister for its validity<sup>503</sup>. Draconian criminal punishments were attached to the breach of the law by the Exchange Control (Anti-Sabotage) Decree<sup>504</sup> of 1977. The international operations of the domestic banks were effectively circumscribed. The leeway for the banks under the Exchange Control was their appointment as authorised dealers<sup>505</sup> which allowed them to deal in foreign exchange transactions subject to the directions of the Minister. Another exemption<sup>506</sup> also permitted banks to make cash payment in Nigeria to a foreign resident in the course of banking business<sup>507</sup> and the foreign controlled banks in

<sup>498</sup> . See S.3 , Ibid.

<sup>499</sup> . See S.4. Ibid.

<sup>500</sup> . See for instance S.10 (1) (d). Ibid.

<sup>501</sup> . See S.10 (1) (a) (b) &(c).Ibid.

<sup>502</sup> . See S.25 (2). Ibid.

<sup>503</sup> . See S.8,Ibid .

<sup>504</sup> . See Decree No.57 of 1977 .

<sup>505</sup> . See Exchange Control ( Appointment of Authorised Dealers ) Notice , L . N. 83 of 1962 .

<sup>506</sup> . See Exchange Control (Payments ) Order. L.N.91 of 1962.

<sup>507</sup> . See Order 4 (d ) ( i ) & ( ii ) . Ibid.



Nigeria were excluded from the blanket ban on domestic lending to resident foreign corporations<sup>508</sup>. Most of the powers under the Act had been delegated by the Minister of Finance to the CBN<sup>509</sup>.

Although, banks were appointed authorised dealers for foreign exchange dealings, the implementation of the instruments for the management of foreign exchange resources by the CBN and the Ministry of Finance often impacted seriously on efficiency and competitiveness. Principally, the fact that the exchange rate mechanism was managed and administered<sup>510</sup> rather than determined by market forces usually fostered a situation where an army of bank customer desirous of foreign exchange were turned down by the banks due to CBN policy directives. Furthermore, the major administrative mechanism of foreign exchange allocation in the country was the discredited import licence scheme which has been described as " the shortest cut ever devised for haemorrhaging a nation's foreign exchange reserves"<sup>511</sup>.

The scheme relegated the role of banks in the allocation of foreign exchange and "promoted a generation of gentlemen touts and financial pimps who became instant millionaires by virtue simply of their connections in the apparatus for issuing import licences. A brisk under-the-counter trade had grown in licences as they were often issued not to genuine users but to hawkers and touts"<sup>512</sup>. The myriad of abuses associated with the scheme such as corruption, over-invoicing, and favouritism facilitated the siphoning of

<sup>508</sup> . See Exchange Control ( Lending to Banks Exemption ) Order. L. N.92 of 1962.

<sup>509</sup>. See Odozi, Victor. A., "Foreign Exchange Management : The Role Of The Central Bank Of Nigeria" in National Economic Recovery, op. cit., p. 54.

<sup>510</sup>. Ibid., p. 58.

<sup>511</sup>. See Soyinka, Wole., The Open Sore of A Continent : A Personal Narrative of the Nigerian Crisis. Oxford University Press, New York.(1996), p. 80.

<sup>512</sup>. See Okigbo, Pius., Essays in the Public Philosophy of Development.Vol.3, op. cit. p. 214.

foreign exchange into private accounts in Europe and the overvaluation of naira<sup>513</sup>. These effects of exchange control law lends credence to the McKinnon-Shaw developmental theory of regulatory repression.

### **5.7 Financial Repression through Government Borrowing**

One of the most invidious mechanisms of financial repression was governmental borrowing from the banking system especially the commercial and merchant banks through compulsory holdings of the government securities and other forms of directed credit mandated by law<sup>514</sup>. An example of such law is section 40 (7) of the repealed Central Bank Bank of Nigeria Act<sup>515</sup> which prescribed :

The Bank may for the purposes of maintaining monetary stability of the economy of Nigeria, issue, place, sell, repurchase, amortize or redeem securities to be known as "stabilization securities"(which shall constitute its obligations) and the securities shall be issued at such rate of interest and under such conditions of maturity, amortization, negotiability and redemption as the Bank may deem appropriate.

Specific provisions of the law also mandated the CBN to finance the budget deficit of the Federal Government. Section 34(1) of the Central Bank of Nigeria Act<sup>516</sup> provided that notwithstanding "the provisions of paragraph (d) of section 30, the Bank may grant temporary advances to the Federal Government in respect of temporary deficiencies of budget revenue at such rate or rates of interest as the Bank may determine". Section 35 of the same law stipulated that the " Bank shall be entrusted with the issue and management of Federal Government loans publicly issued in Nigeria, upon such terms and conditions as may be agreed between the Federal Government and the Bank". This section had the

<sup>513</sup>. See Yerokun. Olusegun.. Legal Aspect Of Structural Adjustment Programme In Nigeria. op. cit., p. 78.

<sup>514</sup>. See S. 12(5)(d) of Banking Decree No. 1 of 1969 on the holding of government securities as specified assets.

<sup>515</sup>. See Central Bank of Nigeria Act (Amendment) (No.3) Decree No. 50 of 1968 as further amended by section 1 of the Central Bank of Nigeria Act (Amendment) Decree No.4 of 1969.

<sup>516</sup>. See Cap 30 of 1958 as amended.



unsavoury effect of forcing the CBN to underwrite and subscribe the low yielding securities of the Federal Government.

Much of the total internal debt in Nigeria had been financed through the banking system and the commercial banks had provided "the most important and reliable"<sup>517</sup> sources of financing of the internal public debt. This method of financing was the most feasible for the government since private individuals are averse to holding government papers with ridiculously low yields and thus preferred investment in real property.

The trend of forcing the bulk of internal debt on the Nigerian banking system appeared to have emerged in 1968 with introduction of banking unorthodoxy into the Nigerian financial landscape. Appendices II and III respectively indicate that in 1963, the commercial banks only held 2.7 per cent of total domestic public debt in Nigeria and although this proportion rose gradually in the succeeding years, the total holding of the commercial banks was a meagre 9.1 per cent in 1967.

This relatively low level of governmental indebtedness to the commercial banks however changed dramatically in 1968, 1969, and 1970 when the commercial banks held the proportions of 44.4%, 40.6%, and 42.9% respectively of the total Nigerian domestic public debt. In 1974, commercial banks became the main source of internal borrowing by the government holding over 60 per cent of the total domestic borrowing. However, from 1978, the CBN overtook the commercial banks as the dominant source of the government finances and the commercial banks' holdings of the domestic public debt were 33.2% and 32.5% respectively in 1979 and 1980.

In spite of this change of leadership, commercial banks were still significant holders of government debt with proportions above the total holdings of the Non-Bank Public and just behind the CBN which held 35% and 38% respectively in 1979 and 1980. The

<sup>517</sup>. See Agu, *op. cit.*, p. 136.

commercial banks' proportions rose in 1984 and 1985 fiscal years to 35.0% and 38.2% of the total public debt respectively.

The commercial banks' share of the public debt had thus witnessed phenomenal increase and fluctuations with the immediate consequence of " the need for unusually high provision for bad and doubtful debts; which puts the equity of the banking system under pressure"<sup>518</sup>. Of importance, however, was the crowding out of private investment by credit to the government. It has been observed that the excessive government indebtedness propelled illiquidity and reduced " credit available to the productive sectors of the economy ."<sup>519</sup>

This is compounded by the additional financing of government budgetary deficit by excessive borrowing from the central bank "a practice which has serious inflationary implications"<sup>520</sup>. According to the Director of CBN Research Department, "(T)he major source of bank credit to government has been the CBN. All other things being equal, this type of liquidity injection into the economy is highly inflationary....."<sup>521</sup>. A cursory look at Appendices II and III confirmed the dominance of CBN credit<sup>522</sup> as a proportion of domestic public debt since 1978.

The strange but true reality which underscored this deficit financing phenomena had been the persistent warning by the CBN and its officials to the successive governments<sup>523</sup> since 1960s on the dangers of this practice<sup>524</sup>. One cannot disagree with the assertion that

<sup>518</sup>. See Olashore, op. cit., p. 191.

<sup>519</sup>. Ibid., p. 193.

<sup>520</sup>. See Twenty Years Of Central Banking In Nigeria, op. cit., p. 127.

<sup>521</sup>. See Ojo, M. O., op. cit., p. 21.

<sup>522</sup>. The CBN became the principal lender to the government since 1978 when it held 53.4 % of the total public debt. Although, this proportion fell in the two successive fiscal years, it rose in 1981, 1982, and 1983 fiscal years to 52.8%, 54.0% and 51.1% respectively.

<sup>523</sup>. See Twenty Years Of Central Banking In Nigeria, op. cit., p. 118.

<sup>524</sup>. See Central Bank Of Nigeria Annual Report (1966), pp. 13 - 14.



the banking system in Nigeria ".....has been subject to considerable non-commercial interference and to the destabilising effects of a volatile government deficit"<sup>525</sup>. The destabilising consequences of Nigerian government's financial repression reflect the diagnoses of the Mckinnon-Shaw hypothesis.

### **5.8 Efficacy of Regulatory Interventionism and Repressionism in Nigeria : A Critique**

The CBN<sup>526</sup> had attributed the monetary and financial policy gyrations and inadequacies that plagued the Nigerian economy to factors which were essentially governmental in origin and nature. These factors consisted of deficit financing, low interest rates' structure, reckless and totally irresponsible governmental fiscal operations and gross inefficiency of credit guidelines - the principal instrument of regulation. The regulatory measures often had conflicting objectives and unpalatable results.

It may be added that the repressive system created a structure in which access to credit in Nigeria was based "on distribution of power and influence"<sup>527</sup> and the regulatory regime made it possible for large incomes to be earned, without "any visible sign of hardwork, by a few people who had influence over, or had access to those in power"<sup>528</sup>. The circumstances were such that the Nigerian banker had greater latitude to be bad and devious but no "opportunity to be good"<sup>529</sup>.

The regulatory setting of the banks affects not only their contributions to the national developmental objectives, but substantially determines the level of their competitiveness and performance. Perhaps the first alarming observation regarding the Nigerian banking

<sup>525</sup>. See Bevan, David., et al. op. cit., p. 49.

<sup>526</sup>. See Twenty Years of Central Banking in Nigeria, op. cit., pp. 124 - 128.

<sup>527</sup>. See Okigbo, Pius., Essays in the Public Philosophy of Development, Vol.3, op. cit., p. 218.

<sup>528</sup>. Ibid., p. 249.

<sup>529</sup>. Ibid., p. 212.

system was the incredible paucity of banking institutions<sup>530</sup> due to the rigid regulatory control of entry and exit of banks.

According to Dr Sofola, in 1987 "cashing a personal cheque at the branch where the account is kept is capable of taking the entire morning, depending on the length of queues on the day"<sup>531</sup>. The situation was described as "frustrating and agonising"<sup>532</sup> and underscores the reluctance of the majority of Nigerians to use banking services and the tendency to reduce any interaction with the banking industry to the barest unavoidable minimum.

The effects of regulatory repression of the banking system are very conspicuous in the Nigerian economic structure and affirm the McKinnon-Shaw thesis. Before the era of directed credit to the so-called priority sectors of the economy, agriculture was the mainstay of the economy and employed 70 per cent of Nigeria's labour force<sup>533</sup>. The agricultural sector during the regime of directed credit regulation witnessed a low investment and precipitous decline in its productivity and international competitiveness. The sector accounted for only 20 per cent of the GDP in the 1970s and the country

<sup>530</sup>. In 1962, with an estimated population of 50 million, and about 200 banking offices, each banking office in Nigeria served an average population of over 250,000. In 1976, as at June of that year the banking offices had risen to 450, but so also was the population estimated at 80 million resulting in a ratio of one bank to 124,713 persons. One respected view put the proportion at one branch office to over 137,000 persons. These estimates when compared with international statistics brought to the fore the reality that Nigeria was grossly under-banked. The position remained unchanged in 1987 when the ratio was one bank to 2.4 million persons and a branch to about 54,000 persons. See Brown, C. V., *op. cit.*, p. 81. See Odoh, N. O., "Fundamental Problems Of Banking In Nigeria" in Onoh, J. K., (ed.), *The Foundations of Nigeria's Financial Infrastructure*, *op. cit.*, p. 73. See Okigbo, P. N. C., *Nigeria's Financial System*, *op. cit.*, p. 100.

<sup>531</sup>. See Sofola, *op. cit.*, p. 192.

<sup>532</sup>. See Nwankwo, G. O., "The Structure Of The Nigerian Economy And The Nigerian Banking Environment" in *National Economic Recovery*, *op. cit.*, p. 23.

<sup>533</sup>. See Ekundare, Olufemi. R., *An Economic History of Nigeria 1860 - 1960*, Methuen & Co. Ltd. London, (1973), pp 15 - 16.



became dependent on food importation to feed its growing population<sup>534</sup>. The agricultural sector stagnated .

The manufacturing and industrial sectors were accorded greater importance in the credit directions and their contributions to the GDP grew but the growth was unsustainable because the industries were largely import substitution based and dependent almost exclusively on imported raw materials<sup>535</sup> . The high import contents were a drain on foreign exchange reserves<sup>536</sup>.

The external dimension to this directed and cheap credit phenomenon was the priority accorded this venture in foreign exchange allocation . The allocation was facilitated by the issuance of import licences. Import licensing however led to over-invoicing and under-invoicing of the required imported materials by the industries and persons concerned<sup>537</sup>. The operation of import licensing scheme was described as a "huge racket whereby the foreign exchange was siphoned into private account in European countries. The scheme thus contributed to a greater fast depletion of foreign exchange earnings through racketeering"<sup>538</sup>.

Indeed, Bevan and his colleague asserted with considerable veracity on capital flight in Nigeria that " (V)irtually every business man, officials of government, politicians and military officers in the country had a foreign bank account (s)"<sup>539</sup>. The primary and

<sup>534</sup>. See Ojo, M. O., op. cit., p. 10.

<sup>535</sup>. See Akanle, O., " Regulation Of Trade And Investment In Nigeria " in Ajomo, M. A. Akanle, O. & Adewale, O. ( eds. ). Regulation Of Trade And Investment In An Era Of Structural Adjustment : The African Experience, Nigerian Institute of Advanced Legal Studies, Lagos, Nigeria,(1989). p. 46.

<sup>536</sup>. See Nigeria, Trade Policy Review, Vol. 1, GATT Publication services, Geneva. (1991),p. 1.

<sup>537</sup>. See Ogunbanjo, C. O., Nigeria's economic and industrial development ~ Which way?, op. cit., pp. 89 -90.

<sup>538</sup>. See Yerokun, Olusegun, Legal Aspects Of Structural Adjustment Programme In Nigeria, op. cit., p. 78.

<sup>539</sup>. see Bevan, David., et al. op. cit., p. 67.

fundamental cause of this phenomenon has been the exchange and interest rates which reduced the price of money locally compared with abroad.

Hence, the regulatory repressionism of both the interest and exchange rates had only a negative effect of massive capital flight from Nigeria. An estimated US \$ 7 billion net capital flight occurred in Nigeria between 1976 and 1982, while a further US \$ 3 billion capital flight took place from 1983 to 1985<sup>540</sup>.

The large scale predominance of importation and dwindling oil revenue propelled not only domestic debts but equally massive external borrowing. The borrowing philosophy of the Nigerian government was founded on the euphemism that the economy was under-borrowed<sup>541</sup>.

The foreign debts of Nigeria rose from about N376 million in 1976 to N10,577 million in 1983 and peaked at N 17,290 million in 1985. While the foreign debts increased, the total reserves also fell precipitously from a respectable US \$ 10,235 million in 1980 to a despicable US \$990 million in 1983 and a dismal US \$ 1,667 million in 1985. Under the circumstances, it is no surprise that the Nigerian balance of payment reflected<sup>542</sup> this unwholesome state of financial upheaval. The succeeding governments<sup>543</sup> in Nigeria had

<sup>540</sup>. See John Charles Pool and Steve Stamos, *The ABCs of International Finance*. Lexington, Mass, Lexington Books, D. C. Heath & Co.,(1987).

<sup>541</sup>. See Akanle, O., " Regulation Of Trade And Investment In Nigeria " in Ajomo, M. A., et al ( eds. ) op. cit., p. 48.

<sup>542</sup>. Since 1977 when a deficit of US\$823 million was recorded which increased to US \$ 2.109 million in 1978. Although, surpluses were entered for 1979 and 1980 respectively, the deficit returned in 1981 and increased in 1982 to unprecedented level of US \$ 5,613 million . The deficit level in 1985 was US\$1.233 million .

<sup>543</sup>. The Obasanjo regime promulgated the Exchange Control (Anti-Sabotage) Decree of 1977 with draconian penalties to minimise the illegal foreign exchange transfers from the country. The measures were thrown over board by the succeeding civilian regime which relaxed the import and exchange control restrictions and placed most goods on open general licence. However, the increasing perennial level of balance of payment deficit and plummeting foreign reserves forced the civilian government to promulgate the Economic Stabilization ( Temporary Provisions) Act in April 1982 which was designed to arrest further deterioration of the economy through more stringent exchange control measures and import restrictions . The succeeding Buhari regime imposed further stringent exchange control and imports restrictive measures while its successor, the Babaginda regime in October 1985, declared a 15-month Economic Emergency period with further control measures.



made attempts since 1977 to stem the economic downturn without success. The futility of all the measures imposed and adopted by the various regimes and the fundamental distortions prevalent in the rapidly declining economy of the Nigeria made an approach to the international financial institutions inevitable<sup>544</sup>.

## 5.9 Conclusions

The reflection on the effects of specific banking regulatory norms on the Nigerian banking sector and economy reveals their close approximation to the realities diagnosed by Mckinnon-Shaw developmental pure theory of regulatory repression. Indeed, the Nigerian position confirms the theoretical prognoses of Mckinnon-Shaw hypothesis. The interest rate regulation foisted low rates and savings on the economy. Credit direction diverted loans to unworthy and corruptive projects. Reserve requirements reduced credit availability. The governmental borrowings from the banking system crowded out the private sector, and prompted inflation. The indigenisation facilitated the politicisation and mismanagement of banks, and the foreign exchange allocation rules encouraged corruption, foreign exchange misapplication, and capital flight.

The realisation that the regulatory interventionism in Nigeria has had serious deleterious effects prompted the Deputy -Governor of the CBN and a past master of regulatory repression to assert that an "objective observer cannot fail to see that the controls have been, on the balance, a very costly affair "<sup>545</sup>. It was in this circumstance of the effects of the financial regulatory measures that the teams from the International Monetary Fund and the World Bank arrived in Nigeria as predicted by Professor Shaw<sup>546</sup>.

<sup>544</sup>. See IMF Press Release No. 87/2 - "Nigeria : Stand - by Arrangement" IMF Survey, Vol. 16, No.3 of February 9 1987, pp. 46 - 47.

<sup>545</sup>. See Odozi, Victor. A., " Foreign Exchange Management : The Role Of The Central Bank Of Nigeria " in National Economic Recovery, op. cit., p. 66

<sup>546</sup>. In the words of Edward Shaw after a period of massive financial repression in developing countries, economic crises ensued and then " a team from the IMF arrives ". see Shaw, op. cit., p. 247.

**PART IV: DEREGULATION: THE CHANGING NATURE OF BANKING  
REGULATION IN NIGERIA**



## **CHAPTER VI**

### **IMF AND WORLD BANK IN NIGERIA : AN ECONOMY IN FULL RETREAT**

#### **6.1 Introduction**

The IMF and World Bank are international financial institutions that specialise in providing assistance to their country members with economic and financial problems. The preceding chapter has highlighted the effects of regulatory and financial repression on the Nigerian banking system and economy, and their roles in instigating and compounding the country's economic problems. This chapter examines the International Monetary Fund(IMF) and International Bank for Reconstruction and Development(World Bank) assistance to Nigeria in resolution of the economic crisis, and emphasises the two institutions' roles in the adoption, design, and implementation of Structural Adjustment Programme for the country.

The chapter chronicles the circumstances in which the IMF and the World bank compelled the Nigerian government to adopt financial liberalisation policy of the banking system as a core measure of its structural adjustment programme. It traces the relationship between the two international financial institutions and Nigeria from the colonial era to 1987, when the Bretton Wood institutions ensured that Nigeria embarked on financial liberalisation of the banking system. The chapter contains three sections. The first section is the introduction. The second section examines the role of IMF and World Bank in Nigerian banking deregulation and economic reforms, and the conclusion is contained in the last section.

#### **6.2 IMF, World Bank and Nigeria: The Movement Towards Banking Deregulation**

Nigeria became a member of the IMF and World Bank in 1961 pursuant to the International Financial Organisations Act No. 47 of 1960 which authorised the accession of Nigeria to these International institutions. The country's relationship with the Bretton

Wood institutions, however dates back to the colonial era. We have already underscored the role of the World Bank mission of 1953<sup>547</sup> in the economic development plan of Nigeria which encompassed all the sectors of the economy including banking. The mission had an IMF<sup>548</sup> representative on it thus both institutions had participated in the design of the Development Plan of Nigeria at least with respect to expert technical recommendations of highest influence.

The World Bank's financial operation can equally be traced to the colonial period when in 1958, the Bank provided the first loan for the construction of a new railway through Bauchi to Borno<sup>549</sup>. The first loan to an independent Nigeria was however made in 1962 for the improvement of the Lagos Port<sup>550</sup>. Since then, other series of development loans have been made in respect of electricity, education, industries, agricultural, and transport. The loans were granted by the World Bank and often its affiliates<sup>551</sup>.

In direct contrast to the intense relational activities between the World Bank and Nigeria, the country's contact with IMF had been minimal . Indeed, Nigeria had made relatively small use of IMF resources<sup>552</sup> and all " the drawings have, however been repurchased (repaid)"<sup>553</sup>. The country had in the past granted credit in respect of some of the IMF resources<sup>554</sup>. Thus upon the creation of the IMF Oil Facility in 1974, Nigeria lent

<sup>547</sup>. See The Economic Development Of Nigeria, IBRD, op. cit .

<sup>548</sup>. Ibid., pp. V & Vii.

<sup>549</sup>. See Olinger, John. P., " The World Bank And Nigeria " (1979) Review of African Political Economy, no. 13, 9. p. 102.

<sup>550</sup>. Loc. cit.

<sup>551</sup>. I.e. International Development Association and International Finance Corporation.

<sup>552</sup>. See Twenty Years Of Central Banking In Nigeria. op. cit.. p. 182.

<sup>553</sup>. Loc. cit.

<sup>554</sup>. Loc. cit.



it SDR 300 million and pledged a sum of SDR 220 million to the Supplementary Financing Facility of the IMF for the assistance of members in balance of payment difficulties.

The relative amity and balanced relationship between the Bretton Wood institutions and Nigeria suffered a jolt at the onset of 1980s due to the collapse of world oil price towards the end of 1981 and early 1982. The drastic depletion of the foreign reserves of Nigeria, and the country's inability to discharge some trade debts' obligation estimated at US \$ 5 billion, precipitated a credibility crisis with refusal of creditors such as export credit guarantee agencies of further insurance to exports to the country, while commercial banks withheld fresh loans. The ensuing balance of payment and debt crises compelled the Shagari government to introduced domestic measures for the resuscitation of the economy and seek international means to curtail the economic disequilibrium.

The Nigerian Government had recourse in June 1982 to its holdings at the IMF as the first line of defence mechanism. The country's drawings from the Fund consisted of SDR 239m (\$268m) from its SDR holdings and SDR 424m (\$475m) from its reserve tranche, including the Oil and Supplementary Financing Facilities<sup>555</sup>. The Government also initiated the negotiation of six months interest free loan of \$1billion from the Saudi Arabia<sup>556</sup>. The drawings from the Fund and the Saudi Arabian loan were required to boost the country's foreign reserves.

Ironically, the debt tentacles that engulfed the country became rather pronounced despite the drawings from the IMF. The current account deficit remained persistent with mounting a rise in arrears on trade payments. In July and September 1982, the Nigerian Government concluded agreements with more than 60 international banks on refinancing some \$2 billion arrears outstanding on letters of credit alone<sup>557</sup>. The international banks

<sup>555</sup>. See Financial Times. 5 June 1982. p. 3(d).

<sup>556</sup>. Loc.cit.

<sup>557</sup>. See Financial Times. 22 November 1983. p. 18 (c).

however declared their intention of not making more credit available to Nigeria without the underpinning of the Fund<sup>558</sup>. This declaration together with the growth in trade payment arrears and further deterioration in the current account deficit made the Nigerian Government approach to the IMF imperative.

The Shagari Government which was sceptical of the IMF/World Bank market approach, made a cautious invitation to both institutions. The negotiations with the IMF which commenced in April 1983 were for a loan of US\$2.5billion under the Extended Fund Facility (EFF) and an additional US \$500 million from the compensatory financing facility because of the decline in Nigeria's oil exports<sup>559</sup>. Simultaneously, parallel negotiations were initiated with the World Bank for a structural adjustment loan of about US \$300 million<sup>560</sup>. The IMF and the World Bank agreed with some of the policy measures already initiated by the Shagari administration, but critical differences remained regarding certain key measures, especially devaluation of the Naira and privatisation. The Nigerian Government objected to these measures.

The Nigerian officials opposed the Fund and the World Bank's recommendation on devaluation claiming " It would amount to nothing less than a policy ..... suicide"<sup>561</sup>. This was the feuding relationship between the IMF, World Bank and the Nigerian Government until the 31 December, 1983 when the Shagari administration was removed in a coup d'état under the leadership of General Muhammadu Buhari .

The Buhari Government immediately postponed the IMF -Nigerian Government talks<sup>562</sup> which were due in January 1984, and took drastic measures to stem the outflow

<sup>558</sup>. Loc. cit.

<sup>559</sup>. Loc. cit.

<sup>560</sup>. Loc. cit.

<sup>561</sup>. See Financial Times, 22 November 1983, p. 18 (c).

<sup>562</sup>. See Financial Times, 11 January 1984, p. 46.



of foreign exchange from Nigeria. The administration also announced a package of tough economic measures<sup>563</sup> as the core of the regime's first budget in pre-emptive moves on the eve of the IMF - Nigerian Government talks in May 1984. However, the May 1984 talks between the seven -man IMF team and the Nigerian Government failed to agree on the economic stabilisation programme necessary for the grant of the Nigerian Government's request of between US \$2.6 billion and US \$3.2 billion under the Extended Fund Facility of the Fund to bridge its persistent balance of payment deficit<sup>564</sup>.

It may be mentioned that the areas of disagreement concern some of the conditions of the IMF in particular the devaluation of Naira, reduction in petroleum subsidies, liberalisation of trade and privatisation of public corporations and enterprises. The Buhari administration refused to accept these conditions regarding them as detrimental to the Nigerian economy<sup>565</sup>. The international financial muscle was further compressed on Nigeria when the World Bank informed Nigeria that its application for an adjustment loan could not be considered until an appropriate economic stabilisation programme had been concluded with the IMF<sup>566</sup>. The Bank added that the disbursement of all outstanding loan requests from Nigeria would be suspended unless an accord with the IMF was reached.

This financial fait accompli forced the Buhari regime to engage in counter-trade deals whereby Nigerian oil was bartered for intermediate and consumer goods<sup>567</sup>. Suffice it to assert that the deterioration of the external and internal sectors of the Nigerian economy persisted, creating an opportunity for another group of self-seekers to intervene

<sup>563</sup>. The measures included large cuts in government spending, embargo on new projects, ban on foreign borrowings by state governments, wage freeze, increased interest rates, ceilings on bank lending, reform and simplification of import duties and control, reductions in expatriates' remittances and other forms of foreign exchange restrictions.

<sup>564</sup>. See Financial Times, 21 May 1984, p. 3 (a).

<sup>565</sup>. See Financial Times, 4 October 1984, p. 3 (d).

<sup>566</sup>. See The Guardian (Nigerian Newspaper), 8 August 1984, pp. 1 & 2.

<sup>567</sup>. See Daily Sketch (Nigerian Newspaper), 19 March 1984, p. 10.

in the political structure through a palace coup d'état by key military members of the Buhari regime. Thus, on the 27 August, 1985 the Babaginda regime replaced the Buhari government citing varied economic, political and social reasons for its intervention.

The Babaginda administration was desirous of finding a panacea to the economic problem of Nigeria and the country's controversy with the international financial community on the IMF demands. In this respect, the regime permitted a national debate on the acceptance of the IMF loan by the Nigerian Government<sup>568</sup>.

Indeed, the motive of the Babaginda regime in launching the debate appears questionable since in the words of Professor Nwabueze the " populace should not have been involved in IMF debate , it is the province of the government "<sup>569</sup>. The debate was both inappropriate and unfair since "government was far better informed on the issues than the public could ever be"<sup>570</sup>. The realisation that the misinformed public generally opposed the IMF loan led the Government to declare a 15-month state of national economic emergency beginning from 1 October 1985. The emergency brought with it general pay cut for civil servants and military personnel. The Babaginda regime announced on 12 December 1985 its rejection of IMF loan and suspension of further IMF-Nigerian negotiation.

Perhaps, one respect that appears settled to the Government was the willingness of the Nigerian public to undertake measures similar to the IMF conditionalities without taking the loan<sup>571</sup>. Hence, in its 1986 budget<sup>572</sup> the Babaginda regime implemented

<sup>568</sup>. For a detailed discussion of the IMF debate in Nigeria see Oyejide, T. A., Soyode. A., & Kayode. M. O., *Nigeria And the IMF*. ( Ibadan, 1985 ).

<sup>569</sup>. See Nwabueze. B. O., *Military Rule And Constitutionalism*, Spectrum Law Publishing, Ibadan. Nigeria, (1992), p. xi.

<sup>570</sup>. Olashore. op. cit., p. 234.

<sup>571</sup>. See Olukoshi. Adebayo., op. cit., p. 95.

<sup>572</sup>. Loc. cit.



substantially most of the IMF recommendations. The government committed itself to a reduction of petroleum subsidy by 80 per cent, a policy of privatisation and commercialisation of public enterprises, export promotion incentives and trade liberalisation through a new customs tariff structure and abolition of the import licensing system and other trade restrictions. However, in spite of the measures, Nigeria was unable to reschedule her debts. The Paris Club of Western government creditors insisted that Nigeria must meet the usual precondition of an agreement with the IMF before its debt rescheduling can be contemplated<sup>573</sup>.

The prescription of an IMF agreement as a condition *ex ante* by both the public and private creditors has been rationalised on the basis that the IMF stand-by arrangement is a "certificate of good standing"<sup>574</sup> which gives confidence to creditors that the debtor is creditworthy for lending purposes and pursues sound economic policies.

The realisation that an IMF seal of approval was a condition precedent to the rescheduling of a large stock of Nigerian external debt forced a tactical reappraisal on the Nigerian Government. The government based on the advice of the World Bank designed an economic stabilisation programme which was sufficient to obtain an "imprimatur" or stamp of approval from the IMF without taking the Fund's loan<sup>575</sup>. It was believed that the Paris Club would be satisfied with such IMF approval. This strategy was novel and the Financial Times commented that "(S)hould the strategy succeed, it will set a precedent for Third World countries, and give the World Bank a role in helping resolve Third World debt problems it has not up to now played "<sup>576</sup>.

<sup>573</sup>. Loc. cit.

<sup>574</sup>. See Burns, Arthur., *Reflections Of An Economic Policy Maker : Speeches And Congressional Statements 1969 - 1978*. ( 1978 ) p. 462.

<sup>575</sup>. See Financial Times, 24 April 1986, p. 4 (a). see also Financial Times, 2 October 1986, p. 4.

<sup>576</sup>. Loc. cit.

The agreement of the Nigerian Government to an economic stabilisation programme designed by itself with outside support paved the way for the arrival of IMF officials in May 1986 to finalise the terms of the stabilisation programme especially the issue of devaluation<sup>577</sup>. Both the Fund and the Bank offered technical assistance on the modalities for the operation of a foreign exchange auction system which the Nigerian Government had decided to implement<sup>578</sup>.

The stage was set for the announcement in July 1986 of the commencement of Structural Adjustment Programme (SAP) in Nigeria by the Babaginda administration. This announcement signified the acceptance by the Nigerian Government of all the conditionalities of the IMF including devaluation of Naira through a Second Tier Foreign Exchange Market<sup>579</sup> (SFEM). The government established a time-table for the merger of the first and second windows of the foreign exchange market which was duly complied with in 1987 when SFEM became FEM- Foreign Exchange Market.

The conditionality of IMF had been the greatest source of controversy and animosity between the IMF and the succeeding Nigerian Government. IMF conditionality<sup>580</sup> seeks to ensure that the member's policies are adequate to achieve a viable balance of payment's position and sustainable economic growth over a reasonable period. It has been described as a mechanism of ensuring that members who make use of IMF credit will be able to meet the repayment schedule, and thereby maintain the revolving nature of IMF resources<sup>581</sup>. Although conditionality is not regarded as a legal

<sup>577</sup>. See Guardian ( Nigerian Newspaper ), 24 May 1986, pp. 1 & 2.

<sup>578</sup>. Loc. cit.

<sup>579</sup>. SFEM was the foreign exchange market where foreign currencies can be purchased for private purposes.

<sup>580</sup>. See Guitan. Manuel.. Fund Conditionality. Evolution of Principles and Practices. ( IMF. Washington D.C.. 1981 ).

<sup>581</sup>. See " Financing and Adjustment Should Work in Tandem ", in IMF Survey - Supplement on the Fund. (September 1988 ) 1 at 13 - 14.



concept but rather a subject in the realms of economic and political science<sup>582</sup>. Yet the foundation of IMF conditionality lies in its constitutive law .

Article I (V) of the Articles of Agreement of the International Monetary Fund<sup>583</sup> requires the IMF to make its general resources temporarily available to members with balance of payments difficulties under adequate safeguards. Additionally, Article V section 3 (a) of the said Agreement empowers the IMF to adopt policies or special policies on the use of its general resources by the members with a view towards establishing "adequate safeguards for the temporary use of the general resources of the fund". These provisions endow the IMF with the power to impose such conditions as are necessary for the use of its general resources.

The power of the IMF to impose such conditions regarding a member's drawing has been confirmed in decisions of the IMF's Executive Board<sup>584</sup>. However, the IMF is required to pay due regard to the domestic, social and political objectives, the economic priorities, and the circumstances of members, including the causes of their balance of payments problems in "helping members to devise adjustment programs"<sup>585</sup>. It seems while the powers of the IMF to impose conditionality is settled, the precise ambit or scope of such conditionality has been the subject of most trenchant debate in international financial discourse<sup>586</sup>.

<sup>582</sup>. See Denters, E.. " IMF Conditionality : Economic, Social and Cultural Rights. and the Evolving Principle of Solidarity " in P. De Waart, P. Peters & E. Denters.. ( eds. ). International Law and Development. ( 1988 )p. 235.

<sup>583</sup> . See Articles of Agreement of the International Monetary Fund, Dec 27, 1945. (1947) 2 U.N.T.S. 20.

<sup>584</sup>. See International Monetary Fund Executive Board, " Use of Fund's General Resources and Stand - By Arrangements, " Decision No. 6056- ( 79/38 ) ( March 2, 1979 ), Annual Report of the Executive Board for the Financial Year Ended April 30, 1979, pp. 136 - 138.

<sup>585</sup>. See International Monetary Fund Executive Board, " Use of Fund's General Resources and Stand - By Arrangements, " Decision No. 6056- ( 79/38 ) ( March 2, 1979 ). Annual Report of the Executive Board for the Financial Year Ended April 30, 1979, pp. 136 - 138.

<sup>586</sup>. See the following examples : Dell. Sidney.. On being Grandmotherly : The Evolution Of IMF Conditionality. ( Essays In International Finance No. 144, Princeton University, Princeton, New Jersey,

It is therefore not surprising that the dispute over certain conditionalities provoked serious antagonism between Nigerian Government and the IMF. An underlying issue in the controversy may be identified as the utilisation of the IMF conditionality as cross conditionality by the World Bank which refused lending and even proposed the suspension of existing funding unless an IMF seal of approval was obtained by the Nigerian Government.

In September 1986, the Nigerian Government most discreetly signed a letter of intent to the IMF for SDR 650 million drawing to fund its economic stabilisation programme<sup>587</sup>. The IMF in turn issued a formal endorsement<sup>588</sup> of the Nigerian economic programme. The World Bank agreed a US \$450 million trade policy loans for Nigeria in aid of the economic stabilisation programme<sup>589</sup>. In October 1986, another agreement with the World Bank on a three year project loan of US \$4.3 billion was announced. The breakdown of the project loan was US \$1.4 billion in 1987, US \$1.2 billion in 1988, and US \$1.7 billion in 1989<sup>590</sup>.

In February 1987, the IMF formally announced the approval of a stand-by loan arrangement of SDR650 million for Nigeria<sup>591</sup>. The arrangement commenced on 30 January 1987 and expired on 31 January 1988. The stand-by arrangement signalled

October 1981), Pirzio-Biroli, Making Sense of the IMF Conditionality Debate " ( 1983 ) 17 Journal of World Trade Law 115, Taylor, Lance., " IMF Conditionality : Incomplete Theory, Policy Malpractice. " in R. Myers ( ed. ). The Political Morality of the International Monetary Fund ( 1987 ), p. 33, Mosley, Paul., Conditionality As Bargaining Process : Structural-Adjustment Lending, 1980-86, ( Essays In International Finance No.168, Princeton University, New Jersey, October 1987 ), Adams, Patricia., " The World Bank and the IMF in Sub-Saharan Africa : Undermining Development and Environmental Sustainability "( 1992 ) 46 Journal Of International Affairs, 97.

<sup>587</sup>. See Financial Times, 29 September 1986, p. 4 (e).

<sup>588</sup>. Loc. cit.

<sup>589</sup>. See Financial Times, 2 October 1986, p. 4.

<sup>590</sup>. See Financial Times, 16 October 1986, p. 6.

<sup>591</sup>. See IMF Press Release No. 87/2 - " Nigeria : Stand-by Arrangement " IMF Survey, Vol. 16, No. 3 of February 9 1987. see also Financial Times, 4 February 1987, p. 3.



according to the Financial Times that "Africa's last significant bastion of resistance to the conventional economic wisdom of the West has been won over"<sup>592</sup>. The Nigerian Government however kept to its firm standing that the loan would not be drawn down and the loan was never drawn.

A stand-by arrangement is a form of documentation by which the IMF assures a member state that it will be able to draw on the resources of the IMF up to a stated amount within a stated period, without further examination of its economic situation or policies<sup>593</sup>. The stand-by arrangements are however mere "gentlemen's agreements" since they are not treated as legally binding agreements<sup>594</sup>. According to Joseph Gold "Stand-by arrangements are not international agreements and therefore language having a contractual connotation will be avoided in stand-by arrangements and letters of intent"<sup>595</sup>.

In essence, the member state has no liability under international law for any infringement of the terms of a stand-by arrangement which requires no registration with the United Nations<sup>596</sup>. In contradistinction to stand-by arrangements with the IMF, the World Bank loan agreements are international agreements and must be registered by the member states with the United Nations<sup>597</sup> and upon registration become public documents. The stand-by arrangements on the other hand are usually secret documents.

<sup>592</sup>. See Financial Times, 18 November 1986, p. 24.

<sup>593</sup>. See Article XXX (b) of the Articles of Agreement of the International Monetary Fund, see also Gold, Joseph., *The Stand-By Arrangements of the International Monetary Fund : A Commentary on Their Formal, Legal, and Financial Aspects.* ( IMF, Washington, D. C., 1970 ) p. 3., see Further Gold, Joseph., "The Growing Role of the IMF's Stand-By Arrangements " ( 1984 ) *Journal of Business Law* 308.

<sup>594</sup>. See Lauterpacht, " Gentlemen's Agreements " in W. Flume et al ( eds. ), *International Law and Economic Order* 381.

<sup>595</sup>. See International Monetary Fund Executive Board, " Use of Fund's General Resources and Stand-By Arrangements ", Decision No. 6056- ( 79/38 ) ( March 2, 1979 ), *Annual Report of the Executive Board for the Financial Year Ended April 30, 1979*, p.136. see also Gold, Joseph., *The Legal Character of the Fund's Stand - By Arrangements and Why It Matters .* ( 5 - 11 IMF Pamphlet Series No. 35, 1980 ).

<sup>596</sup>. See Gold, Joseph., " The Growing Role of the IMF's Stand -By Arrangements ", *op. cit* p.312.

<sup>597</sup>. See UNITAR, *International Financial Institutions*, *op. cit* p. 34.

The strategy of the Nigerian Government of securing a stand-by arrangement with the IMF without drawing down the loan has been commended by Paul Mosley, Jane Harrigan and John Toye, who argued that "(T)his showed great ingenuity on the part of General Babangida....."<sup>598</sup>. Despite occasional hiccups between the Bretton Wood institutions and Nigeria especially on the seemingly foot dragging by the Nigerian Government in respect of measures relating to removal of petroleum subsidy, privatisation, and mounting budget deficit in 1988, a new stand-by arrangement for US \$550 million with a life expectancy of fifteen months was approved by IMF for Nigeria in December 1988<sup>599</sup>.

The above recapitulation demonstrates the means by which the IMF and World Bank "have come to occupy an important, even commanding position in Nigeria's effort to manage its external debt and other economic crisis "<sup>600</sup>. However, the Nigerian Government asserted that its own Structural Adjustment Programme (SAP) was autonomous and independent of IMF, and rather than " accept the loan with its controversial conditionalities, the government resolved to modify and apply some aspects of IMF conditionalities in a unique manner with a view to restore the confidence of the international creditors in the Nigerian economy "<sup>601</sup>. Yet, the programme had all the trappings and trimmings of the basic core IMF/World Bank programme, except that IMF financial relief was not utilised<sup>602</sup>.

<sup>598</sup>. See Mosley, Paul., Harrigan, Jane., & Toye, John., *Aid And Power , The World Bank & Policy - based Lending*, Vol. 1, Analysis and policy proposals, Routledge, London and New York,(1991). p. 61. n.6.

<sup>599</sup>. See Olukoshi, Adebayo., *op. cit.*, p. 100.

<sup>600</sup>. *Ibid.*, p. 101.

<sup>601</sup>. See Yerokun, Olusegun., *op. cit.*, p. 87.

<sup>602</sup>. See Okigbo, Pius., *Essays in the Public Philosophy of Development*, Vol.3. *op. cit.*, p. 240.



Indeed, the fundamental measures under the strict IMF conditionalities such as devaluation of currency, privatisation, removal of government subsidies, liberalisation of trade and finance, interest rate deregulation, reduction of budget deficit and inflation, market forces hegemony, and bureaucracy reduction were the pivotal measures under the Nigerian SAP. Additionally, the approval of IMF stand-by arrangement for Nigeria brought in its tail the typical performance criteria like ceilings on the banking system lending, ceilings on public sector debt, ceilings on the government's budget deficit, minimum levels of foreign reserves and removal of specific import restrictions. The failure of the Nigerian government from time to time to abide by the performance criteria and conditionalities had provoked criticism and threats from the Fund and the Bank<sup>603</sup>.

The paramount features<sup>604</sup> of the Nigerian SAP have been stated as adoption of a realistic exchange rate policy; rationalisation and restructuring of tariffs; strengthening of demand management policies; adoption of measures to stimulate domestic production, and broaden the supply base of the economy; adoption of appropriate pricing policies; encouragement of rationalisation and privatisation of public sector enterprises; reduction of complex administrative controls simultaneously with a greater reliance on market forces and lastly move towards improved trade and payments liberalisation. The programme had the basic objectives<sup>605</sup> of restructuring and diversifying the productive base of Nigerian economy from its oil sector and import dependence, achieving fiscal and balance of payment's viability, sustaining non-inflationary or minimal inflationary growth while reducing public sector inefficiency and intensifying the growth potential of the private sector.

<sup>603</sup>. See IMF Press Release, *op. cit.*

<sup>604</sup>. See The 1987 Budget Speech.

<sup>605</sup>. *Ibid.*

Although the resemblance of the Nigerian SAP measures and objectives with the typical IMF/World Bank SAP is beyond debate, yet in some ways marked a departure from the usual IMF prescription in other countries. The constant feuding between the Bretton Wood institutions and the Nigerian Government regarding key aspects of the programme indicated that the Nigerian programme was not the ideal IMF's SAP<sup>606</sup>. Indeed, according to Essien the "timing of policy actions, the choice of instruments and the targets, are obviously what the Nigerian government would not permit external interferences"<sup>607</sup>.

Nigeria in this respect used its leverage to the greatest advantage of its leaders and civil servants who were "demoralised, inefficient and less than enthusiastic about a system which curtails many of its (their) powers of patronage "<sup>608</sup>. Nigeria with its oil revenue and size " was in a much stronger bargaining position than a country which can reasonably hope for a substantial net aid inflow "<sup>609</sup>. Indeed, Nigeria is not qualified<sup>610</sup> as a heavily indebted poor country(HIPC) under the IMF/World Bank initiative for debt relief. Although the IMF Standy-By Agreements enabled Nigeria to rescheduled her debts with the Paris and London clubs of creditors. Thus, the IMF and World Bank were less effectively in the design, operation and supervision of economic stabilisation programme in Nigeria. This ineffectiveness reflects conspicuously in the implementation of the key aspects of the SAP in Nigeria including the liberalisation and deregulation of the banking and financial system.

<sup>606</sup>. See Essien, Efiang., *Nigeria Under Structural Adjustment*, Fountain Publications, Ibadan,(1990) p. 295.

<sup>607</sup>. Loc. cit.

<sup>608</sup>. See *Financial Times*, 18 November 1986, p. 24.

<sup>609</sup>. See Collier, Paul., "Living Down The Past : Redesigning Nigerian Institutions For Economic Growth" (1996) 95 *African Affairs* 325 at 330.

<sup>610</sup>. The following countries Burkina Faso, Cote d'Ivoire, Mozambique and Uganda are regarded as qualified in Africa. See *IMF Survey*, Vol.26, No.13, July 7, 1997, p. 202.



The financial liberalisation of the domestic and external sectors of the Nigerian economy was embarked upon as an essential policy measure in the adoption of a realistic exchange rate, the establishment of appropriate pricing regime through interest rate deregulation, the greater reliance on market forces, privatisation of government ownership of financial institutions including banks and the liberalisation of payment system. Indeed, financial liberalisation underscores almost all the SAP measures and has the IMF and World Bank as its most enthusiastic advocates in developing countries including Nigeria that made financial liberalisation a pivotal policy measure of her SAP.

### **6.3 Conclusions**

The relationship between Nigeria and the Bretton Wood institutions dates back to the colonial era, and became full fledged when the country acceded to their membership, as an independent country. The relative amity in the relationship changed in the 1980s when the tumultuous economic situation of Nigeria forced her to seek financial assistance from the IMF and World bank. However, the reluctance of the succeeding Nigerian governments to accept in totality the conditionalities of the Bretton Wood institutions, created animosity in the relationship. The Babaginda regime finally succumbed to the pressure of the IMF and World bank, and accepted the conditionalities which signalled the inception of Structural Adjustment Programme (SAP) in Nigeria. This was the circumstances in which financial liberalisation of the banking system formed the core of the Nigerian SAP under the aegis of the IMF and World Bank.

## **CHAPTER VII**

### **BANKING DEREGULATION IN NIGERIA : THE LEGAL FRAMEWORK**

#### **7.1 Introduction**

The previous chapter demonstrates the circumstances in which the IMF and World Bank forced the Nigerian government to embark on financial deregulation of its banking system. This chapter analyses the laws and policies that form the basis of banking deregulation in Nigeria. It also contains a critical exposition of these laws and policies that underpin the financial deregulation programme. Its theme is the revelation that contrary to the widely expressed views in the Nigerian legal literature<sup>611</sup>, the new banking and related laws and policies of the deregulated Nigerian financial system are in many crucial aspects grossly defective and gravely inadequate.

The chapter is divided into five main sections. The first section is the introduction. The second section examines the legislative and policy changes to banking regulations in the two classified periods<sup>612</sup> of 1985 to 1993, and 1994 to 1997. This section contains two subsections. The third section consists of eleven sub-sections which locate some of the major defects in the current Nigerian banking laws and their effects. The fourth section identifies the inconsistencies of some bank related legislation that impinge on the success of the financial reforms. The last section contains the conclusions.

<sup>611</sup>. See Aderemi, Adedamola, O., " Legal Framework For Establishing A Bank In Nigeria : A Critical Appraisal ", op. cit., p. 61., Osunbor, O. A., " Legislative And Institutional Developments In The Banking Industry ", in A decade of innovative Bankers Training, ( Financial Institutions Training Centre, Lagos, 1992)p. 86; see also Sofola, op. cit., p. 219.

<sup>612</sup>. The discussion of the relevant banking laws and policies has been classified into two distinct periods namely 1985-1993 and 1994-1997. This classification underscores the differences in the nature and regulatory orientations of banking laws and policies during the two periods, as result of changes in political regimes. The first period marked the General Babaginda regime when the banking laws and policies were essentially liberal. The second period relates to the political ascendancy of General Abacha, under whom the regulatory stance of banking laws and policies has been mixed, reflecting both deregulatory and interventionist tendencies.



## **7.2 Letting Capital Loose: The Regulatory and Institutional Fabric of Banking Deregulation in Nigeria**

### **7.2.1 Banking Laws and Policy Directives (1985 - 1993)**

The Nigerian banking laws and policies which had been strictly interventionist and control oriented before 1985, underwent significant transformation during this period as a result of the adoption of Structural Adjustment Programme by the General Babaginda's military government. The regime was largely disposed to financial deregulation of the Nigerian banking system, and its legislative measures and policies reflected this political dispensation, despite the occasional outburst of control measures.

The initial legislative measures of the government were aimed at the liberalisation of the Nigerian external sector. The foreign exchange operational rules of banks received a most radical legal change in 1985 with the enactment of the Foreign Currency (Domiciliary Accounts) No. 18 of 1985. The Decree granted the listed banks and any other designated institution the authority to open, maintain, and operate interest yielding domiciliary accounts designated in foreign currency for Nigerians, resident foreigners, and any specified person<sup>613</sup>.

A further reform of the foreign exchange transactional paradigm was instituted with the promulgation of the Second - Tier Foreign Exchange Market Decree No. 23 of 1986. The Decree established the market framework<sup>614</sup> for transaction in convertible

<sup>613</sup>. See S. 1 of Foreign Currency (Domiciliary Accounts) Decree No. 18 of 1985. The specified persons include corporate and incorporate bodies registered in Nigeria, foreign diplomats, missions, international organisations and such persons as may be designated by the Armed Forces Ruling Council.

<sup>614</sup>. The market was structure on the inter-bank system and two forms of transactions in the market namely spot and forward transactions were recognised. The inter bank system consisted of dealings between the public and authorised dealers, interse dealings between authorised dealers themselves, and transactions between the authorised dealers and the CBN.

foreign currency<sup>615</sup>, replacing both the fixed rate exchange mechanism of Naira, and the corrupt-ridden foreign exchange allocation mechanism through import and export licences.

In August 1987, a policy of complete deregulation of interest rate was announced by the CBN as a major policy shift from prior fixed interest rate regime of the Nigerian banking system. Individual bank was allowed freely to determine its deposit and prime lending rates based on the market forces, provided such rates were displayed at its place of business<sup>616</sup>. Payment of interest on current account deposits was also permitted<sup>617</sup>.

This policy of complete interest rate deregulation continued till 1991 when a ceiling on the maximum lending rate was re-introduced and fixed at 21 per cent<sup>618</sup>, due to the wide disparity between deposit and lending rates, and excessive high level of lending rates. The re-introduction of interest rate regulation was however short-lived, and in January 1992, the ceiling on bank lending rates was removed. This policy of interest rate liberalisation subject to the performance criterion was retained in 1993.

The CBN in further pursuant of the financial deregulation programme, rationalised<sup>619</sup> the 18 sectors / sub sectors which had enjoyed mandated credit allocation from the Nigerian banks under the CBN sectoral allocation guidelines.

The procedure for licensing new banks was simplified and rationalised<sup>620</sup> by the CBN and thus encouraged mass entry into the banking industry with attendant vigorous

<sup>615</sup>. See S.1 (1) of the Second-Tier Foreign Exchange Market Decree No. 23 of 1986.

<sup>616</sup>. See Monetary Policy Circular No. 22, p. 10.

<sup>617</sup>. See NDIC, Annual Report and Statement of Accounts, 1990, p. 1. See also CBN, 1990 Monetary And Credit Policy Guidelines, Monetary Policy Circular No. 24 .

<sup>618</sup>. See CBN, 1991 Monetary And Credit Policy Guidelines, Monetary Policy Circular No. 25, p. 8.

<sup>619</sup>. The sectoral allocation was rationalised from 18 sectors to 8 sectors in 1984 and 1985 respectively. In 1986, the sectoral classification was further streamlined to 4 sectors and effective from January 1987, a two -sector categorisation policy was enunciated and adopted. The two sectors consisted of high priority sectors comprising Agricultural production and Manufacturing, and other sectors. See CBN, Credit Policy Guidelines For 1986 Fiscal Year, Monetary Policy Circular No. 20, p. 5.. See CBN, Credit Policy Guidelines For 1987 Fiscal Year , Monetary Policy Circular No. 21, p. 5.



competition. The minimum paid-up capital of banks was increased<sup>621</sup> to ensure the proper capitalisation of new bank entrants.

A mandatory deposit insurance scheme by licensed banks in Nigeria became a legal requirement in 1988 when section 15(1)(a) of Nigeria Deposit Insurance Corporation Decree No. 22 of 1988 requires all licensed banks and such other financial institutions in the country that engaged in the deposits receiving business to insure their deposit liabilities with the Nigeria Deposit Insurance Corporation (NDIC) established under the Decree. The CBN<sup>622</sup> also permitted the commercial and merchant banks in 1988 for the first time, to take up equity ownership in companies.

In 1989, some contentious and largely destabilising policy measures crept into the liberalisation programmes of the Nigerian government. The Federal Ministry of Finance and Economic Development during the year, issued a circular<sup>623</sup> that directed the transfer of Federal and State Governments, and Parastatals accounts with the Merchant and Commercial banks to CBN. The CBN also issued stabilisation securities from time to time to banks in order to mop up the excess liquidity in the system<sup>624</sup>. These measures interalia allegedly invested many Nigerian banks with acute illiquidity, and precipitated their subsequent insolvency and collapse.

<sup>620</sup>. See Oresotu, F. O., " Implementation of Indirect Monetary Control in Nigeria : Problems and Prospects", CBN Economic And Financial Review, Vol. 31, No. 3, Sept. 1993, p. 174.

<sup>621</sup>. The minimum paid-up capital for commercial banks was raised from N10 million to N20 million and that for the merchant banks from N6 million to N12 million. Furthermore, in February 1990, the minimum paid-up capital was increased to N40 million and N50 million for merchant and commercial banks respectively. see Ojo, M. O., " Deregulation In the Nigerian Banking Industry : A Review and Appraisal ", CBN Economic And Financial Review, Vol. 29, No.1, March 1991, p. 9. See also CBN Briefs, Research Department, Series No.95/03, p. 5.

<sup>622</sup>. See CBN, Credit Policy Guidelines For 1988 Fiscal Year, Monetary Policy Circular No. 22, p. 13.

<sup>623</sup>. See Federal Ministry of Finance and Development Circular Letter Ref. Noc / 2700/ v/ 226 of 26 May 1989.

<sup>624</sup>. See CBN, Monetary Policy Circular No. 24 ( Amendment No. 1 ) of August 2, 1990 which re-introduced the use of stabilisation securities for purposes of reducing the bulging size of excess liquidity in banks.

The pre-deregulation ownership rules also received a major legal transformation during the deregulation era. A stringent and restrictive law which restricted foreign equity participation in most Nigerian enterprises including banking to a maximum of forty percent was repealed<sup>625</sup>. A replacement law, the Nigerian Enterprises Promotion Decree No. 54 of 1989 was enacted, and permitted foreign ownership of any enterprise which had not been exclusively reserved for Nigerians by that Decree<sup>626</sup>. The schedule of the Decree which contained the list of reserved enterprises does not include banking. Thus a foreigner may own a banking enterprise in Nigeria.

Prior to 1990, Nigerian banks had prudential requirements which included the compliance with minimum paid-up capital rules, and the maintenance of the liquidity ratios and minimum holding of cash reserves, specified liquid assets, special deposits and stabilisation securities<sup>627</sup>. In March 1990, the CBN implemented the recommendations of Basle Committee of the Bank for International Settlement with respect to a common standard of measurement of capital adequacy. Consequently, a circular<sup>628</sup> was issued by the Apex Bank which required all licensed banks to maintain forthwith a specify per cent of risk weighted assets to capital<sup>629</sup>.

<sup>625</sup>. The Nigerian Enterprises Promotion Decree No. 3 of 1977 was repealed by S. 18 of the Nigerian Enterprises Promotion Decree No. 54 of 1989.

<sup>626</sup>. See S. 1 of the Nigerian Enterprises Promotion Decree No. 54 of 1989.

<sup>627</sup>. See Adekanye, Femi.. " Problems Of Bank Credit And Securities For Bankers Advances " in *Advanced Law And Practice Of Banking In Nigeria* ( Financial Institutions Training Centre, Lagos, Nigeria, 1991 ) pp. 81 &111.

<sup>628</sup>. See NDIC, *Annual Report And Statement of Accounts*. 1990, p. 11. See also CBN Circular of March 1990.

<sup>629</sup>. The licensed banks were required to maintain forthwith a minimum of 7.25 per cent of risk weighted assets as capital, and ensure that at least 50 per cent of their total capital are made up of core capital consisting of share capital and reserves. The minimum ratio has been raised to 8.0 per cent of risk weighted assets to capital since 1st January, 1992. The CBN further prescribed new prudential guidelines for the licensed banks vide Circular Letter No. BSD/DO/23/Vol.I/II of November 7, 1990. Additionally, a mandatory "Statement Of Accounting Standard : Accounting By Banks And Non-Bank Financial Institutions ( Part I ) " was issued for use by preparers and users of published financial statement of banks.



It seems after a quinquennium, that the Nigerian government discovered the unsustainability of the financial deregulation without a major overhauling of the pre-eminent banking laws contained in the 1958 CBN Act and the 1969 Banking Decree. In the circumstances of this realisation, the Nigerian banking laws witnessed fundamental legal reforms in 1991. A new law, the Central Bank of Nigeria Decree<sup>630</sup> No. 24 of 1991, was enacted and it repealed the 1958 CBN Act<sup>631</sup>. A new banking legislation, the Banks and Other Financial Institutions Decree (BOFID) No. 25 of 1991, was also promulgated<sup>632</sup>. This new banking law repealed and replaced the 1969 Banking Decree.

Section 8 of CBN Decree of 1991 specifies the President as the final authority on monetary and banking policy. Section 8(2) of the said Decree provides that :

The President after due consideration may, in writing, direct the Bank as to the monetary and banking policy pursued or intended to be pursued and the directive shall be binding on the Board shall forthwith take all steps necessary or expedient to give effect thereto.

Although, the 1991 CBN Decree retained the principal objects<sup>633</sup> of the CBN , its regulatory role in respect of monetary and banking policy became enhanced<sup>634</sup>. The Governor of CBN was made the sole licensing authority for banks, unlike the repealed banking law, under which the Minister of finance was the grantor of banking licences<sup>635</sup>. The power of revocation of banking licence under specified circumstances was vested

<sup>630</sup>. See Central Bank of Nigeria Decree No. 24 of 1991 hereafter called 1991 CBN Decree.

<sup>631</sup>. See S. 54 (1) & (3). Ibid.

<sup>632</sup>. This Decree is hereafter called BOFID.

<sup>633</sup>. See S. 2, Ibid.

<sup>634</sup>. Section 8 (1) of the CBN Decree merely required the Governor of CBN to keep the President informed of the monetary and banking policy pursued or intended to be pursued by the CBN. The President may however direct the CBN as to the monetary policy pursued or intended to be pursued and such directive shall be implemented forthwith by the CBN. See also SS. 6,8.&13 of CBN Decree No. 24 of 1991.

<sup>635</sup>. See S. 2 of the Banking Decree 1969 .

under BOFID in the Governor of CBN subject only to the approval of the President<sup>636</sup>. Section 12 of BOFID provides in this respect that " The Governor may, with the approval of the President by notice published in the Gazette, revoke any licence granted under this Decree....".

The 1991 CBN Decree contains many new provisions enhancing the regulatory and supervisory powers of the CBN as the financial regulator of the banking system. The BOFID, on the other hand establishes new regulatory framework for the operations and activities of banks and other financial institutions. The BOFID changes the banking norms in Nigeria in some significant respects<sup>637</sup>.

The privatisation programme of the Nigerian government which excluded the public banks in 1988, was later extended to the privatisation of the government banks by a new law, the Bureau of Public Enterprises Decree No. 78 of 1993. This law repealed the Decree No. 25 of 1988, and authorised the full privatisation of thirteen Federal Government-owned banks<sup>638</sup>. The Nigerian banking regulatory mechanism also shifted

<sup>636</sup>. See SS 12 & 14 of BOFID.

<sup>637</sup>. It introduces two new categories of banks, prescribes the maintenance of minimum capital funds and reserve fund by banks. The law formally liberalises interest rate by removing the statutory obligation for the observance of fixed interest rate structure by the Nigerian banks. Specifically, the BOFID was made applicable to the finance houses which prior to 1991, had been operating virtually without formal regulation or regulatory authority. Furthermore, the BOFID also liberalises the banking business operations and functional rules. All banks are allowed to undertake equipment leasing business or debt factoring and own approved shares in specified financial companies subject to the aggregate value prescribed by the law. Section 21 of BOFID unlike the repealed law, also permits banks to own equity shares in small and medium scale commercial, industrial and agricultural enterprises, or in any other business approved by the CBN. Additionally, BOFID sanctions the establishment of representative offices in Nigeria by foreign banks.

It is important to emphasise the fact that BOFID however retained albeit in modified forms the general restrictions of banking activities in respect of maximum credit exposure, insider dealings, non-banking tradings, share acquisition in financial and industrial conglomerates, ownership of non-banking subsidiary, and real estates which were eloquently stated in the repealed banking law subject however to an important modification. The restricted activities can be undertaken by any bank with the prior approval of the CBN. This is an important improvement on the pre-1991 law under which the restrictions were absolute.

<sup>638</sup>. See Part II, Second Schedule of Decree No. 78 of 1993.



from direct regulation to indirect regulation with the introduction of open market operation on June 30, 1993 by the CBN<sup>639</sup>.

### **7.2.2 Changes in Banking Laws and Policy Directives (1994 - 1997)**

This part concentrates on the update of banking policies and directives. It must however be emphasised that unlike the preceding period which was characterised by a deregulatory stance, this period has been marked by serious policy changes and instability which went from outright repression to complete deregulation depending on the policy mood of the government. The attempt here is to capture the essential policy changes since 1994.

#### **7.2.2:1 Banking Regulation and Policies (1994-1997)**

The year 1994 witnessed the re-introduction of administratively controlled interest rates<sup>640</sup>, retained in 1995<sup>641</sup>. The contraction of the sectoral allocation categorisation was altered mildly with the addition of an export sub sector<sup>642</sup> in 1994 and another solid minerals sub sector<sup>643</sup> in 1995.

The high incidence of banking failure in Nigeria due to naked abuses by insiders and recalcitrant debtors prompted the government to enact the Failed Banks (Recovery of Debts) and Financial Malpractice in Banks Decree No. 18 of 1994 as amended by Decree No. 18 of 1995<sup>644</sup>. This law is one of the legal norms with far - reaching effect on the banking activities in Nigeria, since it is the first time that a conscious attempt has been

<sup>639</sup>. See CBN, Annual Report And Statement of Accounts, 1993, p. 12.

<sup>640</sup>. See CBN, Monetary. Credit And Foreign Exchange / Trade Guidelines, 1994 Monetary Policy Circular No. 28 . The maximum lending rate was pegged at 21 per cent.

<sup>641</sup>. See CBN, Monetary. Credit And Foreign Exchange / Trade Guidelines, 1995 Monetary Policy Circular No. 29 of 17/1/95.

<sup>642</sup>. See CBN, Annual Report and Statement of Accounts, 1995. p. 10.

<sup>643</sup>. Loc. cit.

<sup>644</sup>. See Failed Bank (Recovery Of Debts) And Financial Malpractices In Banks (Amendment) Decree No. 18 of 1995.

made to punish bank criminals and recover debts. Section 3 (1) of the said Decree No. 18 of 1994 states the powers of the Tribunal established under the law interalia :

- (a) recover, in accordance with the provisions of this Decree, the debts owed to a failed bank, arising in the ordinary course of business and which remain outstanding as at the date the bank is closed or declared a failed bank by the Central Bank of Nigeria;
- (b).....
- (c) try the offences specified in the Banks and Other Financial Institutions Decree 1991 and the Nigeria Deposit Insurance Corporation Decree 1988; and
- (d) try other offences relating to the business or operation of a bank under any enactment.

The rule on foreign ownership of Nigerian enterprises including banking which had been liberalised significantly in 1989 became completely deregulated with the abrogation of the 1989 Decree<sup>645</sup> by the Nigerian Enterprises Promotion (Repeal) Decree No. 7 of 1995. The implication of this law is that there is absolutely no restriction on foreign ownership of any enterprises in Nigeria irrespective of the nature or capitalisation of such enterprises<sup>646</sup>. The Exchange control regime was liberalised further with the abolition of the Nigerian Exchange Control Act<sup>647</sup> by the Exchange Control (Repeal) Decree No. 8 of 1995. A new foreign exchange market has been introduced by the Foreign Exchange (Monitoring And Miscellaneous Provisions) Decree No. 17 of 1995.

In a dramatic change of policy, on 1 October 1996 the cap on interest rates imposed in 1994 was lifted<sup>648</sup> and remained in force in 1997<sup>649</sup>. A remarkable policy was

<sup>645</sup>. See Nigerian Enterprises Promotion Decree No. 54 of 1989.

<sup>646</sup>. For the view that foreigners cannot invest in specified sectors such as petroleum production and defence which are " classified prime sectors of the economy ". see Okorodudu-Fubara. M. T., " State Control And Intervention In Strategic Business And The Promotion Of Private Investment " in Ayua. I. A. and Owasanoye, Bolaji., *Privatisation Of Government Owned Banks And The Issues Of Ownership And Control ( Legal And Economic Perspectives )*, Nigerian Institute of Advanced Legal Studies, Lagos,(1996),p. 31.

<sup>647</sup>. No. 16 of 1962 now Cap. 112 of 1990 LFN.

<sup>648</sup>. See CBN, Monetary, Credit, Foreign Trade And Exchange Policy Guidelines For 1997 Fiscal Year. Monetary Policy Circular No. 31, p. 9.



unveiled when all forms of mandatory credit allocations by banks through sectoral allocation guidelines was abolished<sup>650</sup> effective from 1 October 1996. The cash reserves requirement of commercial banks was hiked to 8.0 per cent with changes concerning the base for measuring it<sup>651</sup>. The base for measuring liquidity ratio was equally changed<sup>652</sup> as well as minimum paid-up capital requirement<sup>653</sup>. The operations of merchant banking attracted significant liberalisation in 1996 with specific measures<sup>654</sup>.

The most controversial legislative measures since the commencement of banking deregulation in Nigeria are contained in Central Bank of Nigeria (Amendment) Decree No. 3 of 1997 which amended the Principal Decree No. 24 of 1991<sup>655</sup>. A domineering theme of this legislative change is the denial of all forms of independence<sup>656</sup> which the 1991 Decree had accorded the CBN and its Governor. Decree No. 3 of 1997 removed the Governor of CBN from the chairmanship of the CBN Board<sup>657</sup>.

<sup>649</sup>. Loc. cit.

<sup>650</sup>. See CBN, Monetary, Credit, Foreign Trade And Exchange Policy Guidelines For 1997 Fiscal Year, Monetary Policy Circular No. 31, p. 15.

<sup>651</sup>. Ibid., p. 7.

<sup>652</sup>. Loc. cit.

<sup>653</sup>. Perhaps, the most controversial policy enunciated in 1997 is the increment in the minimum paid-up capital requirement of both commercial and merchant banks to a uniform level of N500 million and the existing banks are required to comply with this directive over a transitional period of two years, expiring on 31st December, 1998. see CBN, Monetary, Credit, Foreign Trade And Exchange Policy Guidelines For 1997 Fiscal Year, Monetary Policy Circular No. 31, p. 18.

<sup>654</sup>. Ibid., p. 14.

<sup>655</sup>. 1991 CBN Decree.

<sup>656</sup>. The Governor of the CBN was relieved of his direct responsibility for monetary and credit policy and exchange rate policy. He was also subordinated to the Minister of finance in these respects. see SS. 6 & 8 of the CBN Decree No. 24 of 1991 as amended by Decree No. 3 of 1997.

<sup>657</sup>. See S. 6 (2) (3) (a) of 1991 CBN as amended by Decree No. 3 of 1997. Similarly, two Deputy-Governors were relieved of the Board membership whilst new members consisting of a part-time chairman, four part-time other members, the Director-General of the Federal ministry of Finance, and Managing Director of NDIC are introduced.

In the same vein, the 1991 BOFID was amended by the Banks And Other Financial Institutions (Amendment) Decree No.4 of 1997. The amendment now requires the Governor of CBN to obtain the approval of the Minister in respect of the grant or suspension of any banking licence<sup>658</sup>. Perhaps, the most repressive new provision in BOFID is the amended section 1(1) which now makes the CBN in its banking regulatory and supervisory functions subject to the overall supervision of the Minister of Finance. The said section 1(1) of BOFID as amended<sup>659</sup> provides that "The Central Bank of Nigeria (hereinafter in this Decree referred to as "the Bank") shall have all the functions and powers conferred and the duties imposed on it under this Decree subject to the overall supervision of the Minister".

It may be stated that the analysis of the law and policy of financial deregulation in Nigeria reveals several attempts to institute some of the main thrusts of Mckinnon-Shaw concept of financial liberalisation such as interest rate liberalisation, privatisation, abolition of repressive instruments, and liberalisation of bank entry rules.

### **7.3 Nigerian Banking Laws Under Financial Deregulation: An Appraisal**

A careful appraisal of the Nigerian banking laws during financial deregulation reveals the following critical deficiencies in the laws.

#### **7.3.1 Lack of co-ordination of regulatory and supervisory activities**

The first noticeable defect in the Nigerian banking laws is the absence of a legal provision mandating the co-ordination of regulatory and supervisory activities between the numerous regulatory agencies. The defect has precipitated regulatory arbitrage in which financial operators exploit the gaps in the laws, since the laws and procedures do not clearly spell out who should initiate actions or how each agency can support the other.

<sup>658</sup>. See SS 3 (5) & 60 (2). Ibid.

<sup>659</sup>. See BOFID 1991 as amended by Banks and Other Financial Institutions (Amendment) Decree No. 4 of 1997.



Specifically, the NDIC and the BOFID Decrees<sup>660</sup> equipped both the NDIC and CBN with substantially the same powers of take-over<sup>661</sup>, assumption<sup>662</sup>, closure<sup>663</sup>, receivership<sup>664</sup>, examination<sup>665</sup>, special examination<sup>666</sup> and removal of officers<sup>667</sup>, in respect of failed and failing banks. Yet, there is no provision on seniority of regulatory actions or mechanism, and methodology of co-ordination of implementation.

Additionally, while the CBN under BOFID Decree, is empowered to appoint the NDIC as receiver of a failed bank<sup>668</sup>, the NDIC Decree on the other hand, vests in the Finance Minister the power to appoint NDIC as receiver of a failed bank<sup>669</sup>. Similarly, the CBN receives approvals for its regulatory actions in respect of failed banks from the President or Head of State<sup>670</sup>, but the NDIC receives authorisation for identical regulatory actions from the Finance Minister<sup>671</sup>. Furthermore, the provision of section 54 of 1991 BOFID that allowed the provisions of that Decree to prevail over any inconsistent provisions of the NDIC Decree, thus granting the CBN a regulatory hedge over NDIC,

<sup>660</sup>. See NDIC Decree No. 22 of 1988 as amended. See also BOFID No. 25 of 1991 as amended.

<sup>661</sup>. See S.4 (i) of NDIC Decree, Ibid.. see also S. 34 of BOFID, Ibid.

<sup>662</sup>. See S. 4 (i) of NDIC Decree, Ibid.. see also S. 34 of BOFID, Ibid.

<sup>663</sup>. See S. 4 (g) of NDIC Decree, Ibid.. see also S. 36 of BOFID, Ibid.

<sup>664</sup>. See SS. 4 (j) & 24 of NDIC Decree, Ibid.. see also S. 38 of BOFID, under which the CBN may appoint the NDIC or any person as either official receiver or liquidator.

<sup>665</sup>. See SS. 4 (c) & 16 of NDIC Decree, Ibid.. see also S. 30 of BOFID, Ibid.

<sup>666</sup>. See SS. 4 ( c ) & 18 of NDIC Decree, Ibid.. see also S.32 of BOFID, Ibid.

<sup>667</sup>. See S. 4 ( 1 ) of NDIC Decree, Ibid.. see also S. 33 of BOFID, Ibid.

<sup>668</sup>. See S. 38 of BOFID, Ibid.

<sup>669</sup>. See S. 28 of NDIC Decree No. 22 of 1988 as amended.

<sup>670</sup>. See SS. 12, 33, 34, & 37 of BOFID No. 25 of 1991 as amended.

<sup>671</sup>. See SS. 4, 24, & 28 of NDIC Decree No. 22 of 1988 as amended.

has been amended in 1997 to remove this particular regulatory superiority<sup>672</sup>. The CBN and NDIC are now mutually exclusive in their respective regulatory jurisdictions.

There is no provision for co-ordination of activities between the two regulatory bodies, although they often undertake joint examination whenever they wish<sup>673</sup> and section 36 (5) of the NDIC Decree provides for co-operation between NDIC and CBN. Yet, the absence of mandatory co-ordination of regulatory activities and the 1997 legislative amendments have exacerbated the regulatory conflicts between the two institutions precipitating regulatory arbitrage, policy slippage, unreasonable delays, conflicting directives and regulatory intransigence. Thus, the Deputy Governor of CBN, Victor Odozi, avers that "the situation requires ... a re-examination of the statutes and decrees governing the regulation of banks and getting the regulatory agencies to co-ordinate their activities more effectively"<sup>674</sup>.

It is submitted that a provision mandating the co-ordination of regulatory actions between CBN and NDIC, is crucial to the performance of both their regulatory duties, and must be enacted promptly as a critical component of regulatory measures restoring the stability and viability of the Nigerian financial sector. Indeed, such provision requiring co-ordination of regulatory activities exists between the Federal Reserve System and Federal Deposit Insurance Corporation in U.S.A.<sup>675</sup>, and the Governor of the Bank of England is the Chairman of the Deposit Protection Board<sup>676</sup> and appoints other ordinary members of

<sup>672</sup>. See S. 54 of BOFID No. 25 of 1991 as substituted by BOFID ( Amendment ) Decree No. 4 of 1997.

<sup>673</sup>. See CBN Annual Reports and Statement of Accounts.

<sup>674</sup>. See Odozi, V. A., " Discussion ", in Growth And Stability Of Nigeria's Financial Services Industry, Papers and Proceedings of the Bank Directors' Seminar, 1993 (Financial Institutions Training Centre, Lagos , Nigeria, 1993) p. 20.

<sup>675</sup>. See Scott, Hal. S and Wellons, Philip. A.. International Finance. Transactions. Policy. And Regulation. The Foundation Press, Inc., Westbury, New York,(1996), p. 228.

<sup>676</sup>. See Paragraph 1(1) (a) of Schedule 4 to the Banking Act, 1987, Cap 22, see however the statutory changes under the Bank of England Act 1998.



the Board<sup>677</sup>, while the Deputy Governor and Chief Cashier of the Bank of England are ex-officio members of the said Board<sup>678</sup>. This functional arrangement and the fact that the British Deposit Protection Board operates through the Bank of England, and has no similar regulatory and supervisory powers as the Bank ensures amicable and effective regulatory actions.

The section 23C of the NDIC Decree as amended<sup>679</sup> in 1997 which now specifically requires the NDIC to recommend the revocation of the banking licence of a failed or failing insured bank to the CBN, and to act suo moto if the CBN offers no response within 30 days, does not satisfy the need for a legal provision for co-ordination of regulatory activities between NDIC and CBN in respect of examination, special examination, take-over, assumption, closure, and removal of officers of failed banks. In same respect, the establishment<sup>680</sup> of the Financial Services Coordinating Committee (FSCC) in 1997 has not removed the urgent need for a legal provision mandating the coordination of financial regulatory activities among the financial regulators.

### **7.3.2 Absence of clear procedure for the treatment of Failed Banks**

Another fundamental flaw in the Nigerian banking laws is the failure to establish clear procedure for liquidation of problem banks. The regulatory agencies are endowed with wide discretionary powers and varied policy tools<sup>681</sup>, and they select the proper tool in each case. The ambiguity of procedure and wide discretionary powers have had the effects of investing the rules of the game with regulatory discretion often translating to unpredictability. In fact, the CBN has been accused of regulatory favouritism for

<sup>677</sup>. See Paragraph 1(1) (c). Ibid.

<sup>678</sup>. See Paragraph 1(1) (b) & (c). Ibid.

<sup>679</sup>. See NDIC ( Amendment ) Decree No. 5 of 1997.

<sup>680</sup>. See CBN, Annual Report and Statement of accounts, 1997. p. 22.

<sup>681</sup>. For example powers of take-over, assumption, closure, revocation of banking licence, removal of officers, and winding up of banking business.

sanctioning two or three banks out of 29 distressed banks then polluting the Nigerian financial system<sup>682</sup>.

Furthermore, the wide discretionary financial regulatory powers usually degenerate into forbearance with financial regulators and insurers avoiding the responsibility of closing down the problem banks. This is because " rehabilitation is a costly venture, the path of least resistance may be to turn a blind eye to insolvent institutions and provide implicit subsidies through exemptions from regulations "<sup>683</sup>. The attitude of the Nigerian financial regulators is succinctly captured by this assertion. The CBN had granted numerous forbearance and exemptions<sup>684</sup> to the failing banks without any positive effects, and the reluctance of the regulators to apply the market discipline has come under intense criticisms<sup>685</sup>.

It is in this respect that banking laws which clearly delineate the circumstances that deserve liquidation, assumption, rehabilitation, or conservation; and specify the range of the receiver's or conservator's actions, powers, and rights as well as the time limit for the exercise of the regulatory powers, would have been most helpful in minimising the regulatory inertia that captured the Nigerian financial system. However, the Nigerian banking laws are neither clear in these respects nor endowed regulatory authorities' with adequate powers and time limits. Hence, the demand for the enhancement of the regulatory and supervisory capacity of the Nigerian financial regulators. It must be

<sup>682</sup>. See Ekpenyong. David, B., " Financial Distress In Banks : Nature And Implications " (1994) The Nigerian Banker, Journal of The Chartered Institute of Bankers of Nigeria, April - June 1994, p. 21.

<sup>683</sup>. See Glaessner, T. and Mas, Ignacio., " Incentives And The Resolution Of Bank Distress " (1995) The World Bank Research Observer, Vol. 10, No. 1, 53 at p. 70.

<sup>684</sup>. The regulatory forbearance measures included the re-admission of some distressed banks into the foreign exchange market, and waiver of penalties for non-compliance with minimum capital requirements, see CBN, Annual Report and Statement of accounts, 1993, p. 164.

<sup>685</sup>. See Afolabi, 'Layi.. " Bank Failure And The Rest Of Us ", (1994) The Nigerian Banker, Journal of the Chartered Institute of Bankers of Nigeria, (April - June), p. 13. see also



emphasised that even with clearer laws, the regulators must have the will for regulatory enforcement.

The Nigerian banking laws especially both the CBN and NDIC Decrees, failed to require these regulatory agencies to liquidate or reprivatise assumed banking institutions within a specific period of time. Hence, the regulatory agencies have assumed the control of some Nigerian banks for three or more years, and no decisive regulatory actions had been taken against such assumed institutions<sup>686</sup>. On the contrary, if the Nigerian banking laws had mandated these regulatory institutions to liquidate or sell an assumed institution within a time limit, the saga of numerous assumed banks with many interim management committees would have subsided. In the U.S.A., the Federal Deposit Insurance Corporation is required by law to divest itself of any acquired bank within two years<sup>687</sup>. The NDIC Decree lacks such time limit provision although it was influenced by the Federal Deposit Insurance Corporation provisions<sup>688</sup>.

The absence of time limit for acquisition of failed banks by regulatory agencies had given rise to an adverse incentive by financial regulators who now prefer such indefinite assumption and take over to outright liquidation since it provides pecuniary compensation for the regulators in terms of Board membership of acquired banks, remuneration for such membership or other duties undertaken for the assumed banks<sup>689</sup>, and opportunities to reward friends<sup>690</sup> with appointment into interim boards of assumed banks. The Nigerian

<sup>686</sup>. See CBN, Annual Report and Statement of Accounts, 1995, p. 166. See further The Punch, Business News, Friday, May 16, 1997, p. 11.

<sup>687</sup>. See Glaessner and Mas, op. cit p. 62.

<sup>688</sup>. See Ebhodaghe, J. U. (Managing Director of NDIC), " Some Operational Issues Of NDIC And The Banks ", (1991) NDIC Quarterly, p. 13.

<sup>689</sup>. See S. 33 (2) (d) (11) of BOFID No. 25 of 1991 as amended. permits remuneration to persons appointed to the Board of a failed or failing bank.

<sup>690</sup>. The law allows the CBN to appoint any person as a director of an assumed failed or failing bank. see S.33 (2) (d) (ii) of BOFID No. 25 of 1991 as amended. Indeed, a number of the failed banks are now presided over by three man Boards of directors appointed by the CBN. Such appointed directors are in

situation is full of these instances with some officers of the NDIC or CBN sitting on five or more Interim Management Boards of assumed banks as directors<sup>691</sup> with remunerative incomes for such positions. Indeed, the Director of CBN Banking Supervision, Mr G.A. Ogunleye, and the Board Secretary to the NDIC, Alhaji N. Baba-Ahmed, served as chairman and director respectively of at least seven assumed banks<sup>692</sup> simultaneously as at end of 1995. One wonder, whether the membership of such Interim committees had not taken over their primary duties as key officers of the NDIC or CBN.

It is submitted that the Nigerian banking laws should be amended to specify the clear circumstances for regulatory actions of liquidation, conservation and rehabilitation by the regulatory agencies, as well as the particular powers and duties of the regulatory agencies in respect of each regulatory action. A time limit for the liquidation or sale of assumed and acquired banks must also be incorporated into the Nigerian banking laws. It is contended that if the regulatory framework had contained the suggested provisions, the presidency and the regulatory agencies may have been forced to liquidate the numerous ailing banks now contaminating the Nigerian financial system. It would also have provided a clear signal to the bank owners that the government would take decisive actions against ailing banks. The present intransigence, forbearance, and rehabilitation by the Nigerian financial regulators under the direction of the government, which are

charge of Amicable Bank of Nigeria Ltd, Commercial Trust Bank Nigeria Ltd, Credite Bank Nigeria Ltd, First African Trusr Bank Ltd, Nigerian Universal Bank Ltd, Premier Commercial Bank Plc, Progress Bank of Nigeria Plc, Abacus Merchant Bank Ltd, Century Merchant Bank Ltd, Continental Merchant Bank Nigeria Plc, Great Merchant Bank Ltd, Group Merchant Bank Ltd, ICON Limited ( Merchant Bankers ), Ivory Merchant Bank Ltd, Merchant Bank of Africa ( Nigeria ) Ltd, Nationwide Merchant Bank Ltd, Nigeria Merchant Bank Plc, Prime Merchant Bank Limited, and Victory Merchant Bank Ltd.

<sup>691</sup>. See NDIC, Annual Report and Statement of Accounts, 1995. pp. 80 - 89.

<sup>692</sup>. The banks were African Continental Bank PLC, Co-operative & Commerce Bank ( Nigeria ) PLC, Mercantile Bank of Nigeria PLC, National Bank of Nigeria Limited, New Nigeria Bank PLC, Pan African Bank Limited, and Savannah Bank of Nigeria PLC. see NDIC, Annual Report and Statement of Accounts, 1995, pp. 80, 81, 83, 84, & 85.



designed to prevent failure of sick banks implies "full deposit protection and compromises market discipline"<sup>693</sup>.

### **7.3.3 Lack of adequate safeguards for dealings between Banks and their Subsidiaries and Conglomerates**

A very grave deficiency in the Nigerian banking law is a provision which allows banks to own financial subsidiary dealing in money or capital market<sup>694</sup>, but contains no firewall provision restricting the investment of a parent bank in such financial subsidiary. Hence, the dangers of contagion risk<sup>695</sup> which may occur where a subsidiary runs into financial difficulty, and transmits such problem to its parent bank, with substantial investment in it, have not been prevented. Indeed, the financial instability of some banking corporations in the country was actually triggered off by contagious financial problems in their subsidiaries in which they had large financial investments and exposures.

An example of such numerous cases, is the Abacus Merchant Bank Limited Vs. Abacus Securities Limited<sup>696</sup>, in which the parent bank that became insolvent had placed large investments with the Defendant, its subsidiary, to the tune of N5,900,351.71 and made payments to the other investors in the Defendant, when the Defendant had payment difficulties. These payments totalled N3,514,756.88 . The Plaintiff, parent bank later failed the capital adequacy test and was assumed by the regulatory agency which sued the subsidiary defendant for the sums of the investment, exposures and interests. The Tribunal awarded judgement to the Plaintiff for the various sums claimed. The fact of the financial difficulties of the defendant may however render the judgement nugatory. It seems the Plaintiff's receiver may now proceed on the defendant's assets (if any) and its

<sup>693</sup>. See Glaessner and Mass. op. cit., p. 71.

<sup>694</sup>. See S. 20 (2) (d ) (i) of BOFID No. 25 of 1991 as amended.

<sup>695</sup>. See Scott and Wellon, op. cit., p. 337.

<sup>696</sup>. See Suit No. FBFMT/L / Z. 11/46/96.

debtors. A clear lesson however is that the subsidiary crisis was transmitted to the parent bank, and no law prevented this occurrence or future incidents.

Furthermore, the Nigerian banking law also did not curb imprudent exposure of parent banks to their subsidiaries. There is no provision prohibiting lending to such subsidiaries, or lending on the security of the shares of such subsidiaries. The only provision is a requirement that a bank shall not be permitted to have outstanding an unsecured credit<sup>697</sup> in excess of N50, 000.00 to its subsidiary or any company in which it has a share holding of at least five per cent.. Thus, a parent bank can grant secured credit of any amount to its subsidiary subject to the rule on a bank's maximum loan exposure to a single individual or corporation<sup>698</sup>. This deficient law enabled many failed banks to grant substantial credits to their fragile or phantom subsidiaries on the security of the unworthy shares of such subsidiaries or undervalued securities.

The law also facilitated large insider abuses with funds transferred from banks to subsidiaries which allocated them to their ultimate beneficiaries<sup>699</sup>. Some directors of the parent banks who were also common directors of the subsidiaries simply evaded the law which prohibited unsecured credit in excess of N50,000.00 to such directors<sup>700</sup>, by placing the share certificates of the subsidiaries as securities for credit from the parent banks.

It is recommended that a firewall provision be enacted in Nigerian banking law prohibiting the banks from granting loans to, or investing in securities underwriting by their subsidiaries, or granting loans on the security of such subsidiaries' shares.

<sup>697</sup>. See S. 20 (2) (a) (iii) of BOFID No. 25 of 1991 as amended.

<sup>698</sup>. See S. 20 (1) (a) of BOFID No. 25 of 1991 as amended, which limits a bank's maximum loan exposure to any person to twenty per cent of the shareholders fund unimpaired by losses, and in case of a merchant bank to fifty percent of its shareholders fund unimpaired by losses.

<sup>699</sup>. See Sagbama, J.E.L., " Gerald P. O'Driscoll, JR.: Bank Failures : The Deposit Insurance Connection Contemporary Policy Issues Vol. VI, No. 2, April 1988 ", (1991) CBN Economic & Financial Review, Vol. 29, No. 2, p. 220.

<sup>700</sup>. See S. 20 (2) (a) (i) of BOFID No. 25 of 1991 as amended.



Alternatively, a parent bank's loans or investment in its subsidiaries, may be deducted from the parent bank's capital. The identical provisions to those suggested exist in Chile<sup>701</sup>, and USA<sup>702</sup>. It is our view that a firewall provision will minimise the large scale abuses of the interlocking corporate structure, which are prevalent in the Nigerian financial system.

#### **7.3.4 Absence of provisions on managerial and financial competence**

Another very serious omission of the Nigerian banking law is the absence of a ' fit and proper ' test. The 1991 BOFID glaringly omitted this important provision despite the condemnation of its legislative predecessor for the same error of omission. A legal commentator comments on the absence of a provision relating to the personality of bank owners and director in Nigeria thus "as the law stands (notwithstanding practice) it is indeed possible for dishonest persons to be engaged in the formation and operation of banks and that this does not augur well for the country's financial system....."<sup>703</sup>

The 1991 BOFID did not cure this defect and it has still not been rectified. This failure enabled banking licences to be given " to those who could not by stretch of imagination pass the test of personal integrity. Management with little or no credible background or experience were approved and entrusted with the responsibility of managing financial institutions "<sup>704</sup>.

Section 19 of the said BOFID which prescribes the CBN approval for interlocking directorship in banks, and requires all bank directors and officers to sign a code of conducts, and section 44 of BOFID that mandates CBN approval of a bank chief executive or director's appointment before such appointment is made, have failed totally as legal facade. They have not prevented the likes of Lord Chief Ifegwu holding directorship

<sup>701</sup>. See Eyzaguirre, in Shakil Faruqi (ed.). op. cit., p.137.

<sup>702</sup>. See Scott and Wellons. op. cit., p. 132.

<sup>703</sup>. See Aderemi, Adedamola. O., " Legal Framework For Establishing A Bank In Nigeria : A Critical Appraisal" op. cit., p. 58.

<sup>704</sup>. See Osa-Afiana, op. cit., p. 38.

in two banks,<sup>705</sup> fraudulently wrecking one bank<sup>706</sup>, absconded<sup>707</sup>, and installing his wife as the chairman of the second bank<sup>708</sup>. These laws have also failed to protect the banking system from the kleptomaniac activities of many bank chief executives that now put the financial system in a state of collapse.

In the circumstances, we recommend the introduction of a mandatory 'fit and proper' test into the Nigerian banking law. This recommended provision must require the regulatory agency to determine before the grant of banking licence, whether the proposed persons are fit and proper persons to hold the positions of directors, controllers or managers of a banking corporation having regards to their probity, competence, diligence, soundness of judgement, and general honesty or other public record. A provision similar to this exist in UK<sup>709</sup>, and the law in USA requires the regulatory agency to determine the adequacy of the managerial resources of an applicant banking corporation before the grant of banking authorisation<sup>710</sup>.

It is further recommended as an urgent legal remedy to the high incidence of insider abuses of Nigerian banks by their respective Chief executives, a fundamental rule that " at least two individuals effectively direct the business of a banking corporation "<sup>711</sup>. The failure to observe this rule should be made a ground of revocation of a banking

<sup>705</sup>. Chief Ifegwu was the majority shareholder and director of Alpha Merchant Bank, and Chairman of the Citizen Bank Limited.

<sup>706</sup>. Alpha Merchant Bank.

<sup>707</sup>. Chief Ifegwu absconded from Nigeria and was tried in absentia for his criminal activities against the Alpha Merchant Bank.

<sup>708</sup>. See NDIC. Annual Report and Statement of accounts, 1995. p. 81.

<sup>709</sup>. See S. 9 (2) .and Paragraph 1 of Schedule 3 of Banking Act, 1987, Cap. 22. Non- compliance with this provision is a ground for revocation of banking licence. See S. 11 of Banking Act, 1987, Cap. 22.

<sup>710</sup>. See Scott and Wellon. op. cit., p. 225.

<sup>711</sup>. see Paragraph 2 of Schedule 3 of Banking Act, 1987, Cap 22.



licence. This so-called 'four eyes' test which is a core banking rule in UK<sup>712</sup>., will put an end to the present era of abusive Chief executives or executive chairmen who arrogate all decision-making powers in banks to themselves, and subsequently abuse such powers without any internal checks. It is hoped that a 'four eyes' test in Nigeria may prevent the episodes such as that of Jimi Lawal<sup>713</sup> whose draconian executive powers single-handedly wrecked the Alpha Merchant Bank, of which he was the managing director at the material time. The recommended rule will require the collusion of the two principal controllers of a bank for high level insider abuses to undermine the financial stability of a bank.

### **7.3.5 Inefficient restrictions of banking activities**

The Nigerian banking laws seem to have also neglected the important needs of responding to the challenges of financial disintermediation now facing the Nigerian banks. The Process of banking disintermediation according to Zahler<sup>714</sup>, means the substitution by big firms of part of their bank financing with debt financing through the issuance of debt instruments such as bonds, commercial paper, stocks, and the substitution by consumers of bank financing, as result of the prevalence of commercial credit being offered by the non bank financial institutions.

Despite the acknowledged tendency towards banking disintermediation observable in Nigeria<sup>715</sup> due among several reasons to increasing securitisation and the emergence of large number of finance and other non bank firms competing with banks in the latter's traditional areas, the Nigerian banking legislation and policies have failed to respond to

<sup>712</sup>. Loc. cit. The failure to comply with this rule is a ground of revocation of banking licence. See S. 11 of Banking Act, 1987, Cap 22.

<sup>713</sup>. The managing director of the Alpha Merchant Bank who mandated and perpetrated most of the criminal activities that culminated in the bank's failure.

<sup>714</sup>. See Zahler. " Welcome Address " in Shakil Faruqi (ed.), op. cit., pp. 50 - 51.

<sup>715</sup>. See Nwankwo, G. O., Money and Capital Markets in Nigeria Today. University of Lagos Press. Lagos, Nigeria.(1991). pp. 31- 32.

these challenges and still maintain excessively restrictive legislation that impede the ability of banks to undertake new activities.

The commercial banks in Nigeria are still prohibited from underwriting activities<sup>716</sup> and other forms of investment banking, whilst the merchant banks are restricted from operating in a so-called retail end of banking, and their ability to manage or hold equity issues is unduly encumbered<sup>717</sup>. The line of demarcation between commercial bank and merchant bank has become increasingly blurred, and it may be necessary to harmonise the regulations governing the two types of banking to ensure a level playing field.

It is submitted that many countries such as Chile have reacted positively to the problem of banking disintermediation by permitting banks to enter non-traditional businesses like mutual funds, brokerage, leasing, insurance agency, and investment banking<sup>718</sup>. The legal position in Europe as indicated by the Second Banking Directive of the European Union<sup>719</sup>, is a general liberalisation of banking activities with trading in money market instruments, exchange and interest rates instruments, foreign exchange, derivatives, and transferable securities, as well as participation in share issues and provision of related services, money brokerage, portfolio management and advice, and credit reference services among others, regarded as core aspects of traditional banking in European Union<sup>720</sup>. Even, in USA, the traditional strict separation of investment and commercial banking is changing with the introduction of the Financial Services Competitiveness Act of 1995, which would amend Section 20 of the Glass-Steagall Act,

<sup>716</sup>. See CBN circular Ref. BSD/DO/CB/Vol. 1/29 of 5 January 1995.

<sup>717</sup>. See S. 22 of BOFID No. 25 of 1991 as amended.

<sup>718</sup>. See Zahler, "Welcome Address " op. cit., p. 51.

<sup>719</sup>. See Directive 89/646/EEC ; OJ 1989 L 386/1 ( approved by the Council in Dec. 1989 ).

<sup>720</sup>. See the Annex to the Second Directive. Ibid.



and permit adequately capitalised Bank Holding Company to own a securities affiliate engaged in the dealing and underwriting of securities<sup>721</sup>.

We recommend the reform of the Nigerian banking law to reflect the current law in Europe that tremendously enhances the competitive ability of the banks by obliterating the distinction between investment and commercial banking, and granting banks greater latitude regarding activities they can undertake . It has been argued that Nigerian regulations limiting banks to certain category of assets should be abolished<sup>722</sup> and banks allowed to diversify into risky but profitable assets which may reduce their overall risk standing. It is further contended that evidence abound " that less risky assets, in the perception of regulators, such as commercial loans and government bonds are either less lucrative, contributing less to the overall margin, or ironically, increasing their risk standing.

For example, of the nine distressed banks in the NDIC 1990 report, for every one Naira (N1) loan, 75k is in collectible - this, therefore, is the irony of less risky assets annihilating the very existence of these banks"<sup>723</sup>. The damaging effect of the severe restrictions on banking activities in Nigeria with numerous banks pursuing same line of activities is the present diversification into mundane retailing business by some banks of selling G.C.E. Examination forms, University Entrance Examination forms (JAMB), and phone cards. This desecration of the banking charters according to a CBN official " is a reflection of the decadence in the system. We condemn it strongly "<sup>724</sup>.

Our proposal for the granting of legislative leeway to Nigerian banking operations will also support the current drive towards globalisation of the banking system, since only

<sup>721</sup>. See Scott and Wellons, *op. cit.*, p. 132.

<sup>722</sup>. See Sagbamah, *op. cit.*, p. 220.

<sup>723</sup>. *Loc. cit.*

<sup>724</sup>. Private interview with Chief Z in Lagos on 22/5/97.

banks that are competent in diversified financial activities can compete in the present globalised financial system in which banks operate more or less as financial conglomerates or supermarkets. Perhaps, it may be mentioned that even the USA directly permits its banks to engage in certain prohibited domestic banking operations in their overseas branches<sup>725</sup>. The liberalisation of Nigerian banking activities will put the banks in good stead and afford them the necessary experience in financial diversification crucial to their global ambitions.

It must be underscored that in implementing this proposal many safety rules, firewall provisions, and capital adequacy requirements specifically designed to cater for the dynamics and inherent risks of banking desegmentation or universal banking must be enacted into the liberalising regulatory measures. With respect to globalisation and asset diversification, we further suggest that the Nigerian banks be permitted to hold foreign assets<sup>726</sup> in their asset portfolio, especially those of foreign governments and reputed institutions. This would minimise the risk concentration of their assets, and may be more profitable than the repressive instruments of the Nigerian government.

#### **7.3.6 Defective provision on Foreign Banks' operations in Nigeria**

It may be mentioned that section 8 of BOFID which authorises the opening of foreign representative offices in Nigeria by foreign banks subject to the approval of CBN is defective in at least two respects. One, the law neither defines the term foreign representative office, nor stipulates the permitted activities of such foreign representative office. Yet, both the term and the scope of the permitted activities are capable of different interpretations. Second, no right of examination or supervision of such foreign representative office is conferred by law on the CBN or any other regulatory agency. This right would now have to be inferred from the law. We recommend that these defects be

<sup>725</sup>. See Regulation K of the Federal Reserve Board (1994) 12 C.F.R; S. 211. 5. See also Scott and Wellons, *op. cit* p. 206.

<sup>726</sup>. See Collier. Paul., *op. cit.*, p. 344.



cured by incorporating into the current banking law the definition of the term foreign representative office, its permitted activities and the right of examination by the CBN at the expenses of such foreign representative office. This is in line with the position of the banking law in both UK<sup>727</sup> and USA<sup>728</sup>, where the banking laws are very clear with respect to foreign representative office, and prevent a situation of conflicting interpretation which the present Nigerian banking law may generate in respect of foreign representative office operations in the country.

### **7.3.7 Absence of Judicial Review**

Finally, the most odious defect of the Nigerian banking law even in the context of financial reform is the absence of judicial review of the regulatory actions of the regulatory agencies<sup>729</sup>. This is an overt politicisation of financial regulation ensuring that corruptive, politicised and abusive decisions of the regulators under the direction of the Presidency or Finance Minister could not be challenged. It also denies the financial deregulation programme of the essential checks and balances that are crucial to its success. This defect has no counterpart in civilised world.

The Banking Act in UK, specifically provides for a judicial tribunal<sup>730</sup> to hear persons aggrieved by the regulatory and supervisory actions of the Bank of England, and a further right of appeal to High Court and Court of Appeal on points of law is granted by the said Act<sup>731</sup>. In USA, the law also confers the right to judicial review on banks

<sup>727</sup>. See SS. 74 - 81 of Banking Act. 1987, Cap 22.

<sup>728</sup>. See International Banking Act of 1978, as amended 12 U.S.C. S3101; see also Subpart B. S.211.24 of Regulation K of the Federal Reserve Board (1994) 12 C.F.R..

<sup>729</sup>. See Umezuruike, H. A. C., " An Appraisal of the supervisory role of the Central Bank of Nigeria over commercial banks under the Central Bank of Nigeria and the Banks and other Financial Institutions' Decrees 1991" in Okonkwo, C. O., (ed.). Legal issues in Banking, Insurance and Corporate Law. The Faculty of Law, University of Nigeria, Enugu, Nigeria.(1992) pp. 6 - 8.

<sup>730</sup>. See SS. 27 & 28 of Banking Act, 1987, Cap. 22.

<sup>731</sup>. See S. 31 of banking Act, 1987, Cap. 22.

aggrieved by the decision of any of the regulatory agencies<sup>732</sup>. We suggest the amendment of the Nigerian Banking law to incorporate the right to judicial review in a court of law by any bank or person aggrieved by the decision of any of the financial regulators such as CBN or NDIC. This would enhance the credibility of the regulatory actions of the financial regulators, and curb the undue politicisation of their regulatory and supervisory activities especially reprisals on competent but politically disfavoured bankers and their institutions.

### **7.3.8 Relegation of competence in financial regulation**

It seems the defects with the Nigerian banking laws are never ending, and indeed, a number of such defects may be outlined<sup>733</sup>. Yet, some repulsive provisions must be accorded a form of prominence. These are the nauseating provisions contained in CBN (Amendment) Decree 1997 which now made the chairmanship and directorship of the CBN Board, part time appointments<sup>734</sup>, and also removed the legal requirement that appointees to the CBN Board shall be persons " of recognised standing and experience in financial or banking affairs "<sup>735</sup>. The substituted qualification is that such appointees shall be " persons of proven integrity and professional competence "<sup>736</sup>. In the same vein, the requisite qualification for the posts of the Governor and Deputy Governors is lowered from high standard requirement of "recognised financial experience "<sup>737</sup> to a lower and

<sup>732</sup>. See Scott and Wellons, op. cit., pp.198-199.

<sup>733</sup>. Some of these defects relate to control over advertisement, inadequate penalties for banking frauds, absence of rules on payment risks, lack of enforcement powers by CBN, and the issue of risk based insurance premium.

<sup>734</sup>. See S. 6 (3) (a) of CBN Decree No. 24 of 1991 as substituted by CBN ( Amendment ) Decree No. 3 of 1997.

<sup>735</sup>. See S. 11 (2) of CBN Decree No. 24 of 1991.

<sup>736</sup>. See S. 11 (2) of CBN Decree No. 24 of 1991 as substituted by CBN ( Amendment ) Decree No. 3 of 1997.

<sup>737</sup>. See S. 9 (1) of CBN Decree No. 24 of 1991.



uncertain requirement of " proven integrity and professional competence "<sup>738</sup>. The type of profession in which such competence is required is nowhere indicated. Thus, the amendment paved the way for the appointment of persons of dubious, doubtful or inconsequential professional backgrounds to the Board, Governorship and Deputy Governorship of a highly complex financial institution - the Central Bank of Nigeria.

These amendments have the combined effects of lowering the standard of the highest organ of the apex financial regulator in Nigeria, at a time when full time devotion to duties and highest recognition and expertise in financial and banking matters are crucial conditions to the restoration of the Nigerian fragile financial system to financial stability, viability, and credibility. The motivation for these crude and irrational amendments is political rent- seeking and provision of plump financial jobs for the unmeritorious and uncommitted political boys, at the expense of a banking system that is in danger of total collapse. We recommend that these irrational amendments be abrogated, and the pre-1997 provision be re-enacted.

It is further submitted that the 1997 Amendment of the NDIC Decree which also introduced<sup>739</sup> part -time chairman and directors, of nebulous credentials to the NDIC Board, is equally irrational, and political motivated. This amendment should also be abolished, and the pre-1997 provision be re-enacted. In the present precarious circumstances of the Nigerian financial system, neither of the two main financial regulatory agencies nor the Nigerian economy, can afford the extravagance of uncommitted and inchoate financial novice, as chairman or director.

<sup>738</sup>. See S. 9 (1) of CBN Decree No. 24 of 1991 as substituted by CBN ( Amendment ) Decree No. 3 of 1997.

<sup>739</sup>. See S. 2 (3) of NDIC Decree No. 22 of 1988 as substituted by NDIC ( Amendment ) Decree No. 5 of 1997.

### 7.3.9 Absence of rules promoting systemic efficiency

The proponents of financial liberalisation, professors Shaw<sup>740</sup> and Mckinnon<sup>741</sup>, and an array of intellectuals such as Diaz- Alejandro<sup>742</sup>, Fry<sup>743</sup>, Annibale<sup>744</sup>, Cho and Khatkate<sup>745</sup>, and Zahler<sup>746</sup>, among others have all underscored the crucial importance of a competition or antitrust law to a programme of financial deregulation or reform. The competition policy has been prescribed as a veritable measure to promote free competition in a deregulated financial market, and prevent anti-competitive practices such as monopolistic pricing, cartelisation, price fixing, and abusive dominant powers from distorting the free flow of competition in the financial market.

In spite of this importance of competition policy, the Nigerian financial deregulation contains no element of competition regulation at all, and very high prices are being paid for this regulatory omission since some dominant banks have continuously distorted competition in the money market. The structure of the Nigerian banking system has been marked by oligopolistic character with few old but well established commercial banks always in surplus funds, and therefore exercise considerable market power over the other banks which are in perpetual need of reserve<sup>747</sup>. This market structure has been exploited by the few liquid commercial banks.

<sup>740</sup>. See Shaw, *op. cit.*, p. 137.

<sup>741</sup>. See Mckinnon, *op. cit.*

<sup>742</sup>. See Diaz-Alejandro, *op. cit.*, p. 381.

<sup>743</sup>. Fry, *Money, Interest, And Banking In Economic Development*, *op. cit.*

<sup>744</sup>. Annibale, *op. cit.*

<sup>745</sup>. Cho and khatkate, *op. cit.*

<sup>746</sup>. Zahler, *op. cit.*

<sup>747</sup>. See Oresotu, F.O., " Interest Rates Behaviour Under A Programme Of Financial Reform : The Nigerian Case ", ( 1992 ) CBN Economic & Financial Review, Vol. 30, No. 2, p. 124.



Most annual reports of the CBN and NDIC since deregulation, have attributed the high bouts of interest rates, interalia, to the oligopolistic and abusive practices of some Nigerian banks<sup>748</sup>. In the words of the CBN Governor, the " high lending rates could have been lower than the current level but for the oligopolistic structure which permits a few banks to act as the prime supplier of funds to the market "<sup>749</sup>. The few banks possess such dominant market power that " each action by the Central Bank to drain reserves from the system merely strengthens the bargaining position of these institutions, resulting in higher interest rates, even when there is excess liquidity in the system as a whole "<sup>750</sup>.

These few dominant banks in Nigeria have clearly been abusing their dominant market powers since a " less skewed distribution of reserves would have led to lower and less volatile rates "<sup>751</sup>. It is submitted that the absence of a competition policy in the country has fuelled and sustained these abusive practices of the dominant banks. A competition policy would have prohibited the banks with dominant positions in the money market from activities incompatible with effective competition in the market such as directly or indirectly imposing unfair prices or other unfair trading conditions .

A competition policy is proposed as a legal curb on the abusive market activities of the few dominant banks in Nigeria, which have been a continuous source of concern to the financial regulator, whose officers have persistently called for the encouragement of a "healthy, competitive and responsive money market "<sup>752</sup>. It is submitted that a competition

<sup>748</sup>. See CBN, Annual Report and Statement of Accounts. 1992, p. 14.. See also CBN, Annual Report and Statement of Accounts, 1993, p. 15.

<sup>749</sup>. See Ogwuma ( 1993 ), op. cit., p. 156.

<sup>750</sup>. See Ojo, M. O., " Monetary Policy Instruments In Nigeria : Their Changing Nature And Implications ", (1993) The Nigerian Banker, Journal of the Chartered Institute of Bankers of Nigeria, April - June 1993, p. 11.

<sup>751</sup>. Loc. cit.

<sup>752</sup>. See Ojo, M.O., " Monetary Policy Instruments In Nigeria : Their Changing Nature And Implications", (1993)The Nigerian Banker, Journal of the Chartered Institute of Bankers of Nigeria, April-June, 1993, p. 11.

policy is an essentially indispensable regulatory instrument for instituting and encouraging a competitive market.

The proposed competition policy would however afford more benefits than simply ridding the market of abusive dominant banks, it would also foster more vigorous competition among the Nigerian banks by prohibiting and banning the present price fixing racket among the Nigerian banks in the form of Bankers Tariffs that prescribe uniform bank charges for all banks in respect of banking services. This price fixing fosters monopolistic practices, ensures unfair pricing<sup>753</sup>, and distorts free and fair price competition in the banking system. The Nigerian banking consumers are denied the advantage of benefiting from lower prices from efficient banks which would occur due to price competition<sup>754</sup>.

Indeed, all progressive economies in the World have competition or antitrust laws, with USA enacting one since 1890, and UK enacted a competition policy in 1980. Japan, Germany, Brazil, Argentina, Chile, Mexico, and the European Union countries<sup>755</sup>, all have competition laws.

#### **7.3.10 Absence of information disclosure rules**

The urgent needs for improved preventive and protective measures in the Nigerian banking laws informed our additional suggestions for the reform of these laws. No information is available to guide depositors in these banks, and even to warn some of their owners and shareholders of impending doom. We therefore propose the incorporation into both the 1991 CBN Decree and 1991 BOFID Decree, two new provisions. The first provision should mandate a public information disclosure by the CBN on the financial conditions of each bank in the country. The proposed provision should require the CBN to

<sup>753</sup>. See Edozien, John.. Midweek Concord, 25 June 1997. p. 3.

<sup>754</sup>. See Accad, Micheal., *ibid*.

<sup>755</sup>. See Articles 85 & 86 of the EC Treaty. 1957.



publish in a national newspaper, at least three times a year, its opinion on the state of affairs of each banking institution.

The second provision should permit authorised private specialised agencies to classify the quality and risk of bank assets, and each bank must have at least two private appraisers. These two proposed provisions may, and in our view, must be extended to the other non-bank financial institutions. It may be underscored that Chile<sup>756</sup>, a country that experienced financial crisis of the present Nigerian dimension in the 1980s, has these provisions in its banking laws, and other countries have similar provisions<sup>757</sup>.

It is submitted that such public information disclosure rules will ensure the adequate capitalisation of banks, and curb massive insider abuses in many banks. Additionally, the proposed rules will force the corrupt supervisors at the CBN and NDIC to undertake banking supervision diligently, while the private bank auditors will stop false reporting. These results will be propelled by the presence of private credit ratings and public information on which the banks can be assessed, and the supervisors and auditors' examinations and reports scrutinised. The opposing argument that new banks may be adversely affected is also not valid. It seems the proposed rules will ensure that new banks are adequately capitalised, and offer efficient value-added services to compete with the well established banks.

#### **7.3.11 Lack of Judicial Protection against Extortionate Credit Charges**

Another provision that we suggest should very urgently find its way into the Nigerian banking laws is the one which empowers a court to re-open credit agreements where their terms are extortionate, and do justice between the parties. This provision is crucial to curb the exploitative acts of many Nigerian banks in charging new floating interest rates on old debts<sup>758</sup>. The banks often justifiably relied on the interest rate

<sup>756</sup>. See Eyzaguirre, op. cit p. 137.

<sup>757</sup>. E.g. Canada and Hong Kong.

<sup>758</sup>. See Okigbo, Essays in Public Philosophy of Development, Vol.3. op. cit p. 220.

variation clause in the credit agreement, and the Nigerian highest court has upheld this arrangement<sup>759</sup>. However, the underlying issue that some banks may misuse or abuse this interest rate variation clause to extort arbitrary, exploitative, and unreasonable interest rates from their customer remains unresolved.

There is no law at present which allows a court to re-open extortionate credit bargain with banks in Nigeria, unlike the position in UK, where the court under the Consumer Credit Act 1974 may re-open extortionate credit bargains between banks or other financial and credit institutions, and their customers, and make an order doing justice between them<sup>760</sup>.

It is submitted the enactment of the power by a court to re-open extortionate credit agreements between banks, other financial institutions and their customers, will provide a crucial succour to many Nigerian bank customers who are suffocating under the yokes of interest rates aggravated debt burdens in respect of loans concluded many years before the regime of variable and floating interest rates. Indeed, the recent case of Union Bank of Nigerian Limited Vs Oziggi<sup>761</sup>, comes to mind here. In this case, both the High Court and Court of Appeal refused to allow a bank to charge new interest rates on an old mortgage loan, in the face of an ambiguous variable interest rates clause. However, the Supreme Court upheld the agreement and validated the new interest rates that made the outstanding debt, a triple amount of the original loan<sup>762</sup>. A law similar to the proposed one

<sup>759</sup>. See Union Bank of Nigeria V. Professor Albert Ozigi { 1994 } 3 N.W.L.R. 385.

<sup>760</sup>. See S. 137 (1) of Consumer Credit Act 1974.

<sup>761</sup>. Supra.

<sup>762</sup>. See for an analysis of the case Adekunle. Adedeji.. "Variation of Interest Rates in Loan Agreement", (1995) 2 Journal of Nigerian & Comparative Law, No. 1, p. 25. See also Ajai, Olawale.. "Recovery of Interest by Banks: A Critical Examination of Nigerian Case Law", (1997) 41 Journal of African Law, p. 109.



perhaps, could have forestalled the occurrence of this monumental commercial exploitation and injustice.

#### **7.4 Perversion of Purposeful Bank Related Legislation**

A tendency of the Nigerian government to undermine the purpose of genuine bank related legislation may also be discerned. The Money Laundering Decree No. 3 of 1995 is a good example in this respect. The Money Laundering Decree is enacted to stem the laundering of drug money through the Nigerian banking system. However, the Decree has been twisted from its lofty goal by some of its perverse provisions which outlaw certain cash transactions in Nigeria. These provisions are rather irrational and inconsistent with some existing laws.

Section 1 of the Money Laundering Decree<sup>763</sup>, prohibits cash transaction in Nigeria of any amount exceeding N500,000 or N2 million in case of individual or corporation respectively. Any transaction over the specified limit must be transmitted through a financial institution. A simple demonstration of the irrationality of Section 1 of the Money Laundering Decree above may be undertaken. This law requires transactions exceeding N500,000 (equivalent of £5,000) by an individual to be channelled through the banks, yet, the maximum amount available to a depositor in the event of bank failure under the NDIC Decree<sup>764</sup> is N50,000 (equivalent of £500). Thus, if a bank fails before the completion of a transaction, a depositor who obeys the Money Laundering Decree would suffer serious financial hardship mandated by the NDIC Decree. This shows the irrationality of Money Laundering Decree and its conflict with another bank related law.

A much damaging provision is a legal obligation imposed by the said Decree on a bank to disclose and report in writing to the NDLEA<sup>765</sup> within seven days, any single

<sup>763</sup>. See S. 1(a) & (b) of Money Laundering Decree No. 3 of 1995.

<sup>764</sup>. See S. 26 of Nigeria Deposit Insurance Corporation Decree No. 22 of 1988 as amended. For the criticism of the inadequate Deposit Insurance in Nigeria see Uche, Chibuike. U., and Osho, Babatunde., "Rethinking Deposit Insurance in Nigeria", [1997] 6 Journal of International Bank Law, p. 240.

<sup>765</sup>. NDLEA is the acronym for the National Drug Law Enforcement Agency. in Nigeria.

transaction, lodgement or fund transfer in excess of N500,000 or N2 million in case of individual or corporate body respectively<sup>766</sup>. The NDLEA may issue a stop notice in respect of the transaction, or procure an order blocking the account involved<sup>767</sup>. The law grants the NDLEA the general powers to investigate an account in any manner deemed appropriate<sup>768</sup>, and abolishes the defence of bank secrecy by any bank refusing to collaborate with the NDLEA<sup>769</sup>.

It is equally important to underscore the fact that the NDLEA is not required by the law to have reasonable suspicion before stopping or blocking bank accounts, or conducting surveillance on such accounts, including phone tapping, computer bugging and illicit procurement of financial and commercial documents<sup>770</sup>.

The problem is further complicated by the corruption, notoriety, and executive lawlessness<sup>771</sup> of the NDLEA, the Nigerian Drug Law Enforcement Agency. Since, the law has granted the NDLEA these powers without any judicial oversight<sup>772</sup>, the possibility of abusive exercise of the powers for corrupt purposes make the Nigerian banking system a danger zone to many wealthy customers. That all banks have obligations to report particular transactions to the NDLEA, suggests that the Drug Agency without any effort

<sup>766</sup>. See S. 10 of Money Laundering Decree No. 3 of 1995.

<sup>767</sup>. See S 10 (4) & (6). Ibid.

<sup>768</sup>. The law expressly permits the NDLEA to undertake surveillance operations in respect of any bank account including wire tapplings, telephone tapplings, and computer buggings. see S. 12 (1). Ibid.

<sup>769</sup>. See S. 12 (2). Ibid.

<sup>770</sup>. See SS. 10 & 12. Ibid.

<sup>771</sup>. See Newswatch, February 2, 1998, p. 15, where the chairman and chief executive of the NDLEA, Major-General Bamaïyi, reportedly refused to advocate the legal ordination of the agency as a federal government agency because of its high level of corruption.

<sup>772</sup>. The NDLEA does not require a court order to undertake any investigative or punitive activities under the Money Laundering Decree, except the blockage of an account, which requires the order of a Tribunal. See S. 10 (6) of Money Laundering Decree No. 3 of 1995.



will have details of the financial transaction of most Nigerians, and may procure corrupt reward from any bank customer, upon the threat of a stop notice or account blockage. The capacity of the NDLEA to detain a person on suspicion of drug money laundering means most Nigerian bank customers are in serious dilemma.

It is submitted that the unqualified disclosure rules now enshrined in this law, negates the purpose of financial deregulation to attract capital return flight as most flight capital would not return under such looming investigation, prosecution and possible persecution. Most Nigerian capital hoarded abroad would certainly remain outside except for clandestine informal movement in and out of the country. Additionally, and very significant, is that the Nigerian banking system has been made much more unattractive to customers since the banking secrecy no longer exists, and banks are now spies and informants on their clients. In the words of Umunnaehila, the Money Laundering Decree is already "taking its toll on the banking system"<sup>773</sup>.

We therefore recommend a major overhauling of the Money Laundering Decree to accord with economic sense and common rationality. In this respect, it is submitted that the prohibition of any cash transaction over N500,000 or N2,000,000 in case of individuals or companies should be abolished. The existence of banking secrecy under the Nigerian banking law should be fully restored subject to the generally accepted exceptions<sup>774</sup>. The NDLEA should be able to exercise power of stopping or blocking an account or obtaining banking information only upon reasonable suspicion and pursuance to a prior court order. A rational, coherent, realistic, and enforceable money laundering law should be enacted, with broader and wider categories of activities<sup>775</sup> constituting money laundering.

<sup>773</sup>. Loc.cit.

<sup>774</sup>. Such as when disclosure is compelled by law, or the disclosure is in public interest or the bank's interest, and when the customer consents to a disclosure.

<sup>775</sup>. such as tax evasion, conversion of public funds, proceeds from oil bunkering, kick-backs, and smuggling.

## 7.5 Conclusions

This chapter has underlined the major regulatory and institutional elements of financial deregulation in Nigeria between 1985 and 1997. In the periods 1985 to 1993, the main deregulatory policies concerned the liberalisation of the external sector, deregulation of interest rates, reduction of sectoral allocation prescriptions, privatisation of banks, adoption of new prudential regulations, and enactment of new central bank and banking laws. The new laws enhanced the regulatory powers of the regulators in some respects.

The periods 1994 to 1997 combined both the elements of interventionism and deregulation. The Exchange control law and the Nigerian Enterprises Promotion Decree were repealed, while sectoral allocation was scrapped. The Failed Bank Tribunals were constituted to deal with the problem of bank failure. However, the financial regulatory agency, the CBN, lost all its independent regulatory powers.

The chapter has equally identified some major defects in the current Nigerian banking laws contrary to the established views that the banking laws are adequate. Specially, the chapter identifies the defects in relation to the provisions dealing with co-ordination of regulatory actions by regulatory agencies, treatment of failed banks, financial dealings between banks and their subsidiaries, competence of bank managers and directors, restriction of banking operations, and foreign banks' operations.

The absence of core rules promoting systemic efficiency and preventing extortionate bank charges or abusive financial regulatory actions has also been underscored, while the tendency of the Nigerian government to subvert purposeful bank related legislation is highlighted. The chapter recommends credible reforms to the identified defects in the current Nigerian banking laws. Suffice to assert that this chapter has highlighted the regulatory and institutional dynamics that influenced the consequences of financial deregulation of the Nigerian banking system.



## **CHAPTER VIII**

### **THE CONSEQUENCES OF DEREGULATION AND LIBERALISATION OF THE NIGERIAN BANKING SECTOR**

#### **8.1 Introduction**

The legal and policy underpinnings of banking deregulation in Nigeria have been examined in the preceding chapter. This chapter analyses the consequences of the financial liberalisation. The indices embraced as gauges for measuring the effects of deregulation include the growth of the banks, changes in financial savings, level and structure of interest rate, competitiveness and efficiency of the system, profit, and the system's integration with the international banking system<sup>776</sup>. It is appreciated that these indices are by no means exhaustive for measuring changes in a banking system<sup>777</sup>. The chapter consists of six sections. The first section is the introduction. The second, third, fourth and fifth sections deal with specific consequences of liberalisation of the banking sector in Nigeria. The last section contains the conclusions.

#### **8.2 Growth of Financial Sector : Banks and other Financial Institutions**

A core aspect of financial deregulation was the deliberate relaxation of the rules of entry into banking operation and privatisation of banking corporations that permitted banking ownership by private entrepreneurs. The liberalisation of ownership rules also encouraged foreign interests in Nigerian banking industry. The CBN simplified and rationalised the procedure for licensing new banks, and simultaneously increased the minimum paid-up capital requirements for the new banks to ensure their adequate capitalisation. Thus, in

<sup>776</sup>. See Ojo, M. O., " Deregulation In The Nigerian Banking Industry : A Review And Appraisal " in Deregulation in the Nigerian Banking Industry : Directions, Challenges, Problems and Prospects, ( 1991 Bank Directors Seminar Papers And Proceedings, FITC, Lagos, Nigeria.)p. 115.

<sup>777</sup>. See Fry, Maxwell. J., Money, Interest, And Banking In Economic Development. The John Hopkins University Press, Baltimore and London,(1991)

1988, the minimum paid-up capitals for commercial and merchant banks were increased to N10mm and N6mm respectively from their levels in 1979.

This liberalisation of the entry obstacle immediately propelled a rush for banking licences. At the dawn of financial liberalisation in 1986, there were 42 banks<sup>778</sup> in the country. Deregulation however catapulted the number of banking corporations to an unprecedented level. In 1987, the number of banks rose marginally to 50, and by 1990 there were 107 banks<sup>779</sup>. This banking growth occurred inspite of a further increase in the minimum paid-up capital for commercial and merchant banks<sup>780</sup>. The upsurge in banking corporations continued unabated, and in 1992 the CBN reported<sup>781</sup> the existence of 120 banks comprising 66 commercial banks and 54 merchant banks. The branch networks also rose exponentially from 1,494 bank branches in 1986 to 2,391 bank branches in 1992 and pegged at 2,478 bank branches<sup>782</sup> in 1993.

It may be underscored that the phenomenal increase<sup>783</sup> in the number of banking corporations in the country would have continued but for a temporary embargo on licensing of new banks prescribed by the government<sup>784</sup> in 1991. The embargo was a

<sup>778</sup>. See Ebhodaghe. J. U., " A century of banking : Lessons for Deposit Banking : Lessons for Banks Deposit Protection. (1992 ) NDIC Quarterly, Vol. 2, December.

<sup>779</sup>. See NDIC. Annual Report and Statement of Accounts. 1990, p. 2.; See also Ebhodaghe, *ibid*.

<sup>780</sup>. The CBN further hiked the minimum paid-up capital requirements of commercial and merchant banks from N20mm and N12mm in 1989 to N50mm and N40mm respectively. However, the Nigerian banking promoters were patently undaunted by the incessant increase in minimum paid-up capital requirements of banks which in a space of four years, had occurred thrice. ( See Appendix IV). For an analysis of Bank Share Capital see Uche. C. U., "Bank Share Capital Regulation in Nigeria", [1998] *Journal of International Banking Law*, p. 30.

<sup>781</sup>. See CBN, Annual Report and Statement of Accounts, 1992, p. 153.

<sup>782</sup>. See CBN, Annual Report and Statement of Accounts, 1993, p. 161.

<sup>783</sup>. The number of banking corporations in the country as at December, 1995 was 115 consisting of 64 commercial banks and 51 merchant banks. The decline in aggregate bank number was due to the liquidation of 5 failed banks. The total bank branches fell from 2,541 to 2,500 in 1995 due to the liquidation of the 5 failed banks. see CBN. Annual Report and Statement of Accounts, 1995, pp. 5 & 17.

<sup>784</sup>. See ( 1991) NDIC Quarterly, p.1.



response to the alarming increase in unethical banking acts, geographical concentration of banks in a section of the country<sup>785</sup>, and protestations of bankers to the emergence of unhealthy banking institutions<sup>786</sup>. Thus, since 1991 no new banking licence had been granted<sup>787</sup>.

The liberalisation of bank entry and the concomitant growth in the number of banks, have tremendously improved the availability of banking facilities to the Nigerian depositors, in direct contrast to the pre-deregulation period<sup>788</sup>. The growth in the banking system can equally be assessed from the changes in its total assets and deposit liabilities. The total assets of the commercial and merchant banks in Nigeria that was N62,108.4 million in 1987, increased to N555,472.7 million in 1995 respectively<sup>789</sup>. The illustration of the changes in the total assets and deposit of the banking system is contained in Appendix V.

The remarkable growth in financial industry during the period of deregulation was not limited to the banking sector, there was a radical transformation of the Nigerian financial landscape with the emergence of different types of banks like peoples' bank, profit and loss sharing banks, community banks<sup>790</sup> and diverse non -banking institutions

<sup>785</sup>. Loc. cit.

<sup>786</sup>. See Umunnaehila, Allwell., *Bank Failure In Nigeria : History, Causes and Remedies* , Foundation Publishers, Lagos, Nigeria,(1996). p. 17.

<sup>787</sup>. See CBN, *Annual Report and Statement of Accounts*, 1993, p. 1.

<sup>788</sup>. The changes in the number of operating banks in the country significantly enhanced the accessibility of members of public to banking services since the average number of persons to a banking office was 25,220 in 1995. This may be compared to population per bank branch in 1980 and 1986 which was 115,027 and 75,466 persons respectively. see (1991) NDIC Quarterly, p. 40.

<sup>789</sup>. The total assets of the commercial and merchant banks in Nigeria which was N62, 108.4 million in 1987. increased to N111,551.3 million and N232,278.5 million in 1990 and 1992 respectively. In 1995, the total assets rose to N555,472.7 million. The deposit liabilities witnessed an equally spiral growth from N26,469.7 million in 1987 and N43,869.0 million in 1990 to N87,738.2 million and N208,850.3 million in 1992 and 1995 respectively. See CBN, *Annual Report and Statement of Accounts*, 1995, p. 43; see also CBN, *Annual Report and Statement of Accounts*, 1992, p. 48.

<sup>790</sup>. See S. 9 (2)(b) & (d) of BOFID.

such as finance houses, bureaux - de - change<sup>791</sup>, security affiliates, and mortgage institutions. The emergence of these financial institutions<sup>792</sup> was a direct result of deregulation. The peoples' bank for example was created by the government to promote financial services among local indigenes and sectors that were neglected by the modern banking sector.

The origin of finance houses appears to be sui-generis. They emerged with virtually no regulatory frameworks or regulatory institutions. Most companies operated as finance houses without any form of licence at all, while the cautious companies merely obtained the moneylenders licenses before operating as finance houses<sup>793</sup>.

The absence of any regulatory framework for the finance houses made their establishment attractive to many banks which in the early days of financial deregulation created them as instruments of regulatory circumvention<sup>794</sup>. The banks circumvented the monetary and banking policy of the CBN on credit control and credit exposure with impunity.

It seems the credit policy of the CBN was rendered practically ineffective by the unregulated finance houses. Similarly, the bureaux - de - change were established as mechanisms for diverting allocated foreign currencies to black market. The untoward operative mechanisms of the bureaux-de-change complicated and frustrated the foreign

<sup>791</sup>. See S. 41 of Decree No. 17 of 1995.

<sup>792</sup>. The numerical strength of the specialised banks and other financial institutions which are key players in the banking and related industry may be graphically illustrated by the statistical fact that in 1992 there were 401 community banks, 145 mortgage institutions, 132 bureaux-de-change, 48 licensed and 618 approved finance houses, 140 stock brokerage firms, and 3 approved discount houses in the country. In 1995, the upward swing in the number of most of the mentioned institutions continued with 1,355 community banks, 280 mortgage institutions, 223 bureaux-de-change, 279 licensed finance companies, 162 stock brokerage firms and 5 licensed and approved discount houses. See CBN, Annual Report and Statement of Account, 1992 and 1995, p.17.

<sup>793</sup>. See Sofola, op. cit., p. 105.

<sup>794</sup>. See Sagbamah, J.E.L., " Gerald P. O'Driscoll, Jr.: Bank Failures : The Deposit Insurance Connection Contemporary Policy Issues Vol. VI, No. 2, April 1988 ", CBN Economic and Financial Review, Vol. 29, No. 2, June 1991, p. 220.



exchange policy measures of the government. Regulatory catch-up game was played in 1991 to capture the regulatory free-riding by the finance houses which had operated largely as informal market<sup>795</sup>.

Since it is acceptable that growth can be measured by the reference to the increase in the number and size of service providers, the complexity of the organisational settings of the service providers, the range of services provided and the location in which services are rendered<sup>796</sup>, it may be safely concluded that banking deregulation has precipitated phenomenal growth of the financial industry in Nigeria. Indeed, the growth in the banks influenced a corresponding growth in financial savings<sup>797</sup>.

The twin liberalisation policies of interest rate decontrol and liberal bank entry rules, directly influenced the level of financial savings in Nigeria in the period after deregulation. The financial savings of the financial system in 1985 were N11,786. 8 million. This aggregate sum later increased in 1991 to N37,738.2 million, and N121,026.2 million in 1995<sup>798</sup> (see Appendix VII). In nominal term, this is about a tenfold increase within ten years. The data on the aggregate credit to the economy also indicates the utilisation of financial savings by the financial system<sup>799</sup>.

<sup>795</sup>. See CBN, Annual Report and Statement of Accounts, 1992, p. 17.

<sup>796</sup>. See Oyejide, Ademola. T., " Policy Framework and Growth of the Nigerian Financial System " in Growth And Stability Of Nigeria's Financial Services Industry. ( 1993 Papers and Proceedings of the Bank Directors' Seminar. FITC, Lagos, Nigeria ). p. 2.

<sup>797</sup>. See Nwankwo, G. O.. Money and Capital Markets in Nigeria Today, University of Lagos Press, 1991, p. 26. Indeed, professor Nwankwo observes the positive development in the Nigerian money market as " increased institutional savings since the deregulation of interest rates in 1987 ".

<sup>798</sup>. See CBN, Annual Report and Statement of Accounts, 1995, p.38.

<sup>799</sup>. Ibid., p. 25. The monthly average total credit to the economy which in 1985 was N31,335.5 million , increased to N83,823.7 million in 1991 with a further rise to an unprecedented level of N383,821.4 million in 1995. This is a thirtyfold increase which indicates that the average amount of bank credit to the economy is thrice the amount of mobilised savings.

Another offshoot of the banking growth and interest liberalisation was financial innovation and enhancement of banking competition. The banks utilised payment incentives such as interest payment on current account, high yielding bank products, and up-front interest payment on deposits to attract depositors<sup>800</sup>. Money market instruments and other high yielding bank products made their debut on the Nigerian money market<sup>801</sup>. Indeed, Nwadike<sup>802</sup> in 1990 reported the existence of 151 different banking products<sup>803</sup> in Nigeria. The Nigerian banks also internationalised their services<sup>804</sup>.

The growth of the banking system was however precarious and unsustainable. The policies underlining the banking deregulation were politicised and mismanaged. Firstly, the decision to increase the number of the banks and other financial institutions was premature and politically motivated. The final approval for new banking licences resided in the presidency until 1991 when the CBN Governor was made the sole licensing authority. Yet, this position of the CBN Governor was a mere legal cosmetic because the Government had placed an embargo on the licensing of new banks when the licensing powers became

<sup>800</sup>. See Umunnaehila. Allwell., op. cit., p. 17.

<sup>801</sup>. See NDIC, Annual Report And Statement of accounts, 1990, p. 98.

<sup>802</sup>. See Nwadike, C. I., " New products in banking industry ", Department of Economics, University of Ibadan, M.Sc. ( Banking and Finance ), Project Report, cited in Soyibo and Adekanye, op. cit., p. 27.

<sup>803</sup>. Many banks invested in computerisation of their operations and related technology to facilitate efficient financial intermediation on behalf of their customers. The Societe Generale Bank and the First Bank of Nigeria introduced Automated Teller Machines (ATM), while Electronic Fund Transfer (EFT) was pioneered by Universal Trust Bank in June, 1991. Many plastic cards also emerged like the UBACARD and UNICARD, and weekend banking became the vogue. The CBN joined the Society for Worldwide Interbank Financial Telecommunication (SWIFT) and paved way for the Nigerian banks to join the SWIFT which now has eleven member banks in Nigeria.

<sup>804</sup>. See NDIC, Annual Report and Statement of accounts, 1990, p. 4. The above deregulatory measures and the adoption of the capital adequacy standard of the international banking community by Nigeria facilitated the exportation of banking services from the country to neighbouring countries. Thus 1990, four Nigerian banks namely First bank Plc, Union Bank Plc, Continental Merchant Bank, and First Interstate Merchant Bank together with some Nigerian and Beninoise private investors opened a bank in the Republic of Benin called Banque International Du Benin ( BIBE ).



vested in the CBN Governor. Furthermore, the presidency still retained the routine approval of new banking licences.

Secondly, the decision to increase the number of banks was made without regards to the supervisory capability of the CBN, which was tenuous and grossly inadequate. Additionally, the CBN was only concerned with increasing the minimum paid-up capital for banks without implementing stringent prudential regulations. Hence, capital adequacy rules and improved prudential requirements were not introduced until 1990 when the banks had started failing. Thirdly, the mass licensing of the new banks was embarked on without prior recapitalisation of the existing undercapitalised government-owned banks which were then dominating the banking system. This position puts some government-owned banks in competitive disadvantage and encouraged moral hazard in unwise lending and solicitation of deposits at unrealistic windrow dressing rates.

Lastly, a new banking regulatory framework was not enacted before the premature liberalisation of banking entry rules, and crucial procedure for early exit of problematic banks was non-existent. It was only in 1991 after the first bouts of bank failure that a new banking law came into operation in the country.

### **8.3 Privatisation of Federal Government Owned Banks**

Bank privatisation was an integral part of the deregulation policies pursued by the Nigerian government. However, banking privatisation was initially bedevilled with policy intransigence and prevarication<sup>805</sup>, demonstrated by the non-inclusion of banks in the privatisation exercise sanctioned by the Privatisation and Commercialisation Decree No. 25 of 1988. The privatisation of the federal government owned banks commenced in 1992 in pursuance of a Presidential Order<sup>806</sup> of August that year which directed the full privatisation of equity holdings of the federal government in all banks<sup>807</sup>.

<sup>805</sup>. See Faruqee, Rashid., " Nigeria : ownership abandoned " in Ishrat Husain and Rashid Faruqee ( eds. ). *Adjustment In Africa : Lessons from Country Case Studies*, ( The World Bank, Washington, 1994 ) pp. 260,261,282 & 283.

<sup>806</sup>. See Newswatch . Nigerian magazine, 17 July 1995, p. 24.

This policy stance of the government was given legislative approval in the Bureau of Public Enterprises Decree No.78 of 1993 which listed 13 banks with government ownership interest for full privatisation<sup>808</sup>. The Decree ostensibly placed all banks with federal government equity interests on privatisation programme. Prior to 1992, the federal government had equity interest in 14 banks comprising eight (8) commercial banks and six (6) merchant banks<sup>809</sup>. (see Appendix VI). The federal government held equity interest of at least 45 per cent in eight commercial banks, and five of the merchant banks, and less than 5 per cent equity interest in the sixth merchant bank<sup>810</sup>. The aggregate assets of the fourteen banks with Federal Government ownership interest represented about 51 per cent of the total banking industry assets, and their total deposits constituted 60 per cent of the total banking deposits<sup>811</sup>.

Twelve of the fourteen banks with federal government equity interest were put up for privatisation and nine have been fully privatised. The privatisation programme was undertaken through public floatation of the shares of the privatised banks on the Nigerian Stock Exchange. However, preferential allotments were made to the staff of each of the privatised banks with two percent of the shares sold to the existing staff, and three percent to the Staff Pension Fund for the benefit of the future staff. In the case of Merchant Bank

<sup>807</sup>. See Bernard B. A. Verr. " Post - Privatisation Appraisal Of Control And Management In Privatised Banks : The Need For A Golden Share " in Ayua I. A. and Owasanoye B. (eds.), *Privatisation Of Government Owned Banks And The Issue Of Ownership And Control, ( Legal And Economic Perspectives)* (Papers and Proceedings of a One-Day Roundtable Conference, NIALS, Lagos, Nigeria, 1996 ) p. 66.

<sup>808</sup>. See Second Schedule, Part II to the Bureau of Public Enterprises Decree No. 78 of 1993.

<sup>809</sup>. See NDIC, Annual Report and Statement of accounts, 1992, p. 46.

<sup>810</sup>. Loc. cit.

<sup>811</sup>. Ibid. p. 47.



of Africa Plc, the Federal Government share ownership of 4.45 per cent was sold by private placement to staff of the bank<sup>812</sup>.

The total number of shares offered to the Nigerian public from the nine banks was 879 million worth N1.050 billion, representing about 30 per cent of the total privatisation proceeds<sup>813</sup>. The remaining three banks namely Continental Merchant Bank Limited, Nigerian Merchant Bank Limited, and ICON Limited - Merchant bankers, which had been plagued with insolvency and capital adequacy problems are in danger of ultimate liquidation unless the capital reconstruction and reorganisation plans of the government with respect to them materialises<sup>814</sup>.

With the privatisation of nine banks through public subscription, and one by private placement, a total of ten banks with Federal Government interest had been privatised. Of the remaining banks with Federal Government interest, three are facing liquidation, while one, the FSB International Bank Plc is yet to be privatised.

Banking deregulation may be hailed for the singular achievement of propelling the return of banking ownership to the private sector from an enforced federal government ownership with its ill-effects of bad management, political interference, poor asset quality, and general inefficiency<sup>815</sup>. The privatisation of banks has however generated its own vices which have made the whole programme suspect. Instances of multiple share holding by individuals who acquired substantial shares in privatised banks through surrogates have been cited<sup>816</sup>. It was alleged that one individual acquired 23 million shares representing

<sup>812</sup>. Ibid. p. 48.

<sup>813</sup>. See Bernard B. A. Verr. op. cit. p. 72. See further World Debt Tables 1996, External Finance for Developing Countries Vol. I : Analysis And Summary Tables. (The World Bank, Washington, 1996) p. 145.

<sup>814</sup>. See CBN, Annual Report and Statement of accounts. 1995. p. 168.

<sup>815</sup>. See NDIC, Annual Report and Statement of accounts. 1992. p. 47.

<sup>816</sup>. See Brigadier E. E. Ikwue. " Discussion after paper one " in Ayua and Owasanoye (eds.). op. cit., p. 88.

11% of the shares in Afribank PLC and another shareholder boasted of 40 million shares in Union Bank PLC<sup>817</sup>. This shareholding structure had engendered domination of the banks' ownership by few rich persons.

Another side effect of the privatisation programme is the routine board room wars and shareholder crises which had engulfed many privatised banks such as Savannah Bank Nigeria Plc which had its board of directors removed by the CBN in September 1995, due to the persistent board room conflict and intractable shareholder crisis<sup>818</sup>. The further tendencies are the frequent buy out of foreign share holdings in the privatised banks by rich Nigerian shareholders who had the desire to gain substantial share holding in the banks<sup>819</sup>, and excessive interference in the management of the privatised banks by the part-time non-executive directors which may jeopardise the operations and viability of the banks.

The Federal Government was however responsible for some of the ownership problems that affected the privatised banks. Principally, the Federal Government<sup>820</sup> continued the appointment of the directors to the boards of the privatised banks despite their privatisation. These created an untoward corporate structure in which the shareholders had no input in the composition of the Boards of directors of their banks. The desire for corporate control stimulated the shareholders into organising "the displacement of government appointed boards"<sup>821</sup>, and precipitated the power struggle in some privatised banks.

<sup>817</sup>. Loc. cit.

<sup>818</sup>. See Bernard B. A. Verr, *op. cit.*, p. 75.

<sup>819</sup>. *Ibid.*, p. 76.

<sup>820</sup>. See Bolaji Owasanoye and Yagba. T.A.T., "Legal Framework For Privatisation Of Banks In Nigeria". in Ayua and Owasanoye (eds.), *op. cit.*, pp. 13 - 14.

<sup>821</sup>. *Ibid.*, p. 14.



Perhaps, the loss of patronage by the government and negative aspects of banking privatisation provided the impetus for the recent moves by the Nigerian government<sup>822</sup> for re-acquisition of interests in the four biggest banks under a concept of golden shares which are minority shares with superior voting rights that will enable the government to influence corporate decisions of the banks for strategic reasons<sup>823</sup>. This attempt at re-nationalisation or de-privatisation had been seriously challenged and contested by national and international interests<sup>824</sup>. The position at present is that the privatised banks remains privatised - thanks to banking deregulation.

#### **8.4 Foreign Exchange Speculation**

Prior to 1986 the exchange rate of Naira was fixed by the government, and the procedure for foreign exchange allocation in Nigeria required possession of an import or export licence by an applicant, which together with other relevant documents would be passed on to an authorised dealer, usually a bank. The authorised dealer handed over such application to the CBN for approval and foreign exchange allocation<sup>825</sup>, while the applicant was required to deposit the equivalent amount in Naira with the CBN.

In 1986, pursuant to the Second-Tier Foreign Exchange Market Decree No. 23 of that year, the exchange rate of Naira was made to reflect market forces. A dual exchange rate was adopted at the Second-Tier Foreign Exchange market. The first-tier exchange rate was managed, and applicable only to public sector transactions. The second-tier rate was subject to demand and supply forces. However, the market was described as unusual

<sup>822</sup>. See Okorodudu - Fubara, M. T., " State Control And Intervention In Strategic Business And The Promotion Of Private Investment " in Ayua and Owasanoye (eds.), op. cit., p. 34.

<sup>823</sup>. Ibid., p. 39 n.18.

<sup>824</sup>. See Thomas Hutcheson expressing the World Bank stance against " golden share " in Ayua and Owasanoye (eds.), op. cit., p. 106.

<sup>825</sup>. See generally Exchange Control Act No. 16 of 1962 now repealed by Decree No. 8 of 1995.

with many banks as demand agents, but the CBN as the sole supplier. In July 1987, the first and second tier markets were merged, with a single exchange rate.

Under the system, the CBN appointed banks and non-banks alike as authorised dealers on the market<sup>826</sup> and the rate of exchange in each transaction was left to the mutual agreement between an applicant purchaser and an authorised dealer<sup>827</sup>. All private and public sectors' transactions that were adequately supported by appropriate documents were eligible for the purchase of foreign exchange on the market and such purchased foreign currency may be repatriated from the country<sup>828</sup>. The CBN however allocated foreign exchange to individual bank based on a pre-determined quota, until March 5, 1992, when the predetermined quota was abolished, and a floating exchange rate system was introduced by the government which induced the substantial depreciation of the over-valued Naira<sup>829</sup>. The problem of exchange rate was compounded by the fact that the government regularly instructed the CBN to change the foreign exchange rate<sup>830</sup>.

Before 1992, the existence of a dual exchange rate and pre-determined quota allocation for individual banks had fuelled speculative activities in foreign exchange market with a booming business both in the formal and the parallel foreign exchange markets<sup>831</sup>. Initially, two important factors facilitated this development. One, the foreign exchange allocated on the first-tier market at below market fixed rate to influential persons found their ways to the parallel market where they are sold at high market rate with substantial arbitrage profit. Additionally, the allocated foreign exchange to banks on pre-determined

<sup>826</sup>. See S. 5 of Second -Tier Foreign Exchange Market Decree No.23 of 1986.

<sup>827</sup>. See S. 9 ( 3 ). Ibid.

<sup>828</sup>. See SS. 10 ( 1 ) & 12. Ibid.

<sup>829</sup>. See Ojo, M. O.. *The Economics Of Controls And Deregulation : The Nigerian Case Study* , ( CBN. Research Department Occasional Paper No. 10, October 31, 1994 ) p. 17.

<sup>830</sup>. See Okigbo, P.N.C.. *Essays In The Public Philosophy of Development*. Vol. 4. p. 100.

<sup>831</sup>. See Ojo. (1994 ). *op. cit.*, p. 17.



quota basis was also made at an exchange rate that was below the market rate, hence most banks recycled their allocated foreign exchange to the parallel or black market for arbitrage purposes.

Indeed, one of the crucial allurements which instigated the massive investment in banking business was the foreign exchange seignorage which the possession of a banking licence confers on the bank owners<sup>832</sup>. An authorised dealership in foreign exchange was usually granted as a matter of course to new banks with the effect that such banks concentrated their operation in foreign exchange dealings<sup>833</sup>. The foreign exchange deal created incentives that allowed for new entries into the banking economy<sup>834</sup>.

It was therefore not surprising that most banks during deregulation depended on foreign exchange speculations for survival and profit. The simplified *modus operandi* is captured by this illustration:

Last year a young banker went in to the weekly forex exercise and got \$100,000 at under N22 for \$1 through the Central Bank which has been pre-sold for N40 making a profit of N1.8 mm for doing nothing, just utilising the resources of all of us (oil) to feather his own nest<sup>835</sup>.

The comment demonstrated the ease with which banks extracted profits from their foreign exchange operations.

Additionally, the absence of effective controls by the CBN enabled some banks to sell allocated foreign exchange in the parallel market, and extracted sizeable profits<sup>836</sup>.

<sup>832</sup>. See Umunnachila, Allwell.. *op. cit.*, p. 18.

<sup>833</sup>. See Olashore. Oladele.. *op. cit.*, p. 121.

<sup>834</sup>. See Ayodele, Sesan. A., " Monetary Policy Instruments In Nigeria (1970 - 92) Nature And Impacts On The Economy " *The Nigerian Banker*, Journal of the Chartered Institute of Bankers of Nigeria . April - June 1993, p. 19.

<sup>835</sup>. See Bamisaiye. Adepitan., " Bankers Against Industry ". *Guardian*, April 19, 1994.

<sup>836</sup>. See Synge, Richard., *Nigeria to 1993 : Will Liberalisation Work ?* (EIU Economic Prospects Series. Business International, Special Report No. 1134) p. 29.

Many banks enjoyed the windfall from the huge arbitrage profits made from foreign exchange activities<sup>837</sup>. Some banks hoarded their officially purchased foreign exchange and falsely altered their books to reflect acceptable exchange dealings<sup>838</sup>, while the hoarded foreign exchange was later sold at exorbitant rates, with huge profits for the banks<sup>839</sup>. The round tripping of funds either through the exporters selling export proceeds to banks at rates above the one per cent margin allowed for foreign exchange market transactions<sup>840</sup> or through some dubious foreign banks' guarantees of Naira denominated loans was prevalent<sup>841</sup>.

The banks engaged in speculative activities on the foreign exchange market by putting pressure on the demand for foreign exchange often with overdraft facilities obtained from the CBN<sup>842</sup>. It has been rightly observed that the "banks were adept at the manipulation of the exchange rate of the dollar all with a view to profit maximisation. The bidding system was replete with so many deficiencies that the Central bank tried one method after the other ....."<sup>843</sup>. The CBN applied various pricing mechanisms including marginal, weighted, average and Dutch auction systems. Indeed, the profit declared at the inception of deregulation by banks has been attributed to speculative gains from foreign

<sup>837</sup>. See Okafor, Francis. O., " Fiscal And Monetary Policies In De-regulated Banking Environment " in The Nigerian Banking And Finance Industry In Transition : Shaping The Future, (1992 Bank Directors Seminar Papers and Proceedings, FITC, Lagos, Nigeria,) p. 132.

<sup>838</sup>. See Adeyemi, Adedokun., "Malpractices in the Banking Industry " in Ajibola and Kalu (eds.). op. cit., p. 23.

<sup>839</sup>. Loc. cit.

<sup>840</sup>. See Nwankwo, G. O., Money and Capital Markets in Nigeria Today, op. cit., p. 28.

<sup>841</sup>. See Adeyemi. Adedokun.. in Ajibola and Kalu ( eds. ), op. cit., pp. 24 - 25.

<sup>842</sup>. See Giwa. R. F., op. cit., p. 67.

<sup>843</sup>. Loc. cit: The CBN at various periods of the financial deregulation in Nigeria embraced diverse exchange rate system such as dual exchange rate system, unified exchange rate system, completely deregulated exchange rate system, fixed exchange rate system, and return to dual exchange rate system. see CBN Briefs, Research Department, Series No. 95/07, June 1995, pp. 2-3. see further NDIC, Annual Report and Statement of accounts, 1990, pp. 8 - 11.



exchange market "than returns from productive investment"<sup>844</sup>. The profits were invested in expensive cars and palatial houses in expensive locations.

It must be emphasised that the foreign exchange transactions by the banks were riddled with illegal activities, graft and alarming corruption<sup>845</sup> which were designed to aid the illicit profit making by the banks in the foreign exchange operations. There was exponential growth in incidence of undervaluation and overvaluation of letters of credit, opening and processing of false and fraudulent letters of credit, negotiation of false and fraudulent bills of exchange, and processing of fraudulent foreign exchange transfers<sup>846</sup>.

Banks were often suspended from bidding sessions or required to pay fines on the accounts of their malpractice at the foreign exchange market. Thus in 1992, dealership licenses of two banks were suspended for aiding capital flight ,and penalties were imposed on 65 defaulting banks with a total sum of N14.7 million realised as fines<sup>847</sup>. Nine banks were suspended from participation in FEM auctions for varied foreign exchange malpractice<sup>848</sup> in 1993 and further suspension orders imposed on erring banks<sup>849</sup> in 1995.

The speculative flurry continued until the CBN in the usual manner embarked on a regulatory catch-up game of merging the banks' current accounts with their foreign exchange market accounts, abolishing foreign guarantees of Naira denominated loan,

<sup>844</sup>. See Umunnaehila. Allwell.. op. cit.. p. 26.

<sup>845</sup>. See Okigbo. Pius.. Essays in the Public Philosophy of Development, Vol.3. op. cit., p. 250.

<sup>846</sup>. See Adeyemi. Adedokun.. in Ajibola and Kalu (eds.), op. cit., pp. 22 - 25. see also NDIC. Annual Report and Statement of accounts, 1992, p. 6.

<sup>847</sup>. See CBN, Annual Report and Statement of accounts. 1992, p. 153.

<sup>848</sup>. See CBN, Annual Report and Statement of accounts. 1993, p. 164.

<sup>849</sup>. See CBN, Annual Report and Statement of accounts. 1995, p. 166.

requiring Naira deposit for forex allocation<sup>850</sup>, and in March 1992, allowing the exchange rate to be market determined, and in step with the target parallel market rate<sup>851</sup>.

These measures checkmated the speculative bidding for foreign exchange by banks for a short period<sup>852</sup>. The unabating pressure on the foreign exchange market instigated the re-introduction of regime of regulation in 1994 during which the Naira was formally pegged and a pro-rata system of foreign exchange allocation became the norm<sup>853</sup>. Under this system, 90 % of the available foreign exchange was allocated to the classified productive sectors, and the remaining 10% was allocated for invisible through the banks which had been categorised into six classes with fixed allocated shares for this purpose.

The policy of guided deregulation adopted since 1995 has now reversed the control system of 1994, while, the Autonomous Foreign Exchange Market was created which further liberalised the foreign exchange dealings<sup>854</sup>. The Autonomous Foreign Exchange Market is the market where transactions in foreign exchange is conducted<sup>855</sup>. However, a dual exchange rate has been reimposed as the norm with a market rate applicable to private transactions, while a fixed rate applies to public sector transaction. This dual exchange rate system has been assailed as distortive of the market and corruptive by providing cheap foreign exchange to public functionaries and their cronies.

The jumbo profits of banks had evaporated with the closure of most foreign exchange arbitrage and speculative opportunities. It is believed that the drying up of the foreign exchange goldmine precipitated "the genesis of the insolvency / distress and

<sup>850</sup>. See Giwa, op. cit., pp. 66 - 67., see CBN, Annual Report and Statement of accounts, 1995. p. 162.

<sup>851</sup>. See NDIC, Annual Report and Statement of accounts. 1992. pp. 6 - 10.

<sup>852</sup>. See NDIC, Annual Report and Statement of accounts. 1992. p. 10.

<sup>853</sup>. See CBN Briefs. Research Department. Series No. 95/06, June 1995. p. 4.

<sup>854</sup>. See S. 1 of Foreign Exchange (Monitoring And Miscellaneous Provisions) Decree No. 17 of 1995.

<sup>855</sup>. See SS. 1 & 40 *ibid*.



consequent failures in the banking industry"<sup>856</sup>. The recent measure<sup>857</sup> in 1997 to liberalise the foreign exchange market further by permitting the unrestricted purchase of foreign exchange for personal travel allowances by Nigerians and business travel allowances for registered companies in the AFEM, has been engulfed by fresh controversy of abusive practices by banks<sup>858</sup>.

### **8.5 Interest Rate Escalation**

The Nigerian government enunciated a policy of complete deregulation of interest rate in August 1987. The CBN permitted the individual bank to determine its deposit and prime lending rates based on the market forces<sup>859</sup>. The CBN also fixed the Minimum Rediscount Rate (MRR) which was intended to indicate the size and direction of desired changes by government at 15 per cent per annum<sup>860</sup>.

The high bouts of interest rate in the country in the aftermath of interest rate deregulation were instigated by the CBN and the government when the MRR was fixed very high<sup>861</sup>. Olashore contends that " .....by predetermining the level of interest to be paid for treasury bills fixed at 14 % by the Central Bank of Nigeria, an indication has already been given of the interest rate regime that will now prevail. Are we suggesting that small scale industries can be sustained on interest rate of 18-20 per cent? "<sup>862</sup>. The CBN

<sup>856</sup>. See Umunnaehila, Allwell.. op. cit.. p. 27.

<sup>857</sup>. See CBN, Monetary, Credit, Foreign Trade And Exchange Policy Guidelines For 1997 Fiscal Year. Monetary Policy Circular No. 31, pp. 30 - 32.

<sup>858</sup>. See Midweek Concord, Wednesday, 25 June 1997. No. 34. pp. 1 & 11.

<sup>859</sup>. See CBN, Credit Policy Guidelines For 1988, Monetary Policy Circular No. 22, p. 10.

<sup>860</sup>. See CBN, Credit Policy Guidelines For 1987 Fiscal Year, Monetary Policy Circular No. 21(Amendment No. 1).

<sup>861</sup>. See Olashore, Oladele.. op.cit. (1988). p. 71.

<sup>862</sup>. Loc. cit.

swiftly reacted to accusation of orchestrating high interest rate by reducing the MRR to 12.7 per cent per annum in December, 1987<sup>863</sup>.

In 1988, the deposit rates varied between 12.40 % and 16.10 % depending on the type and duration of deposit, and type of bank<sup>864</sup>. The high interest rates offered by banks on short term deposits stimulated a preference for such short term deposits of 60 days or 90 days' tenor<sup>865</sup> by the Nigerian depositors. It became a rarity to find willing depositors of money for one year or 365 days<sup>866</sup>.

The interest rate structure changed dramatically in 1989, and ballooned to incredible proportions. It appears the interest rate liberalisation signalled to the Nigerian banks the freedom to charge any rate that the market can bear and the only restraint was the fear of a bank losing its client to another bank<sup>867</sup>. The reported deposit rates pegged at between 16.50 % in case of savings, and 27.20 % in case of one year time deposit. The prime lending rates also climaxed at 25.50 % and 29.80 % respectively. The inflation rate was 50.5 per cent, hence the interest rates appeared justifiable in view of the inflationary trend.

The CBN lamented<sup>868</sup> the existence of the wide spread between banks' deposit rates and their lending rates as well as the spread between the prime rate and other commercial rates. This banking practice was described by the CBN as "unfair to the

<sup>863</sup>. See CBN, Credit Policy Guidelines For 1987 Fiscal Year, Monetary Policy Circular (Amendment No. 2 ) of December 28, 1987.

<sup>864</sup>. The prime lending rates hovered around 16.30 % and 16.50 % depending on the type of bank. The merchant banks offered higher deposit rates and lower maximum lending rates than the commercial banks.

<sup>865</sup>. See Umannachila, Allwell., op. cit., p. 21.

<sup>866</sup>. Loc. cit.

<sup>867</sup>. See Okigbo, Pius., Essays in the Public Philosophy of Development, Vol.3. op. cit., p. 213.

<sup>868</sup>. See CBN, Credit Policy Guidelines For 1988 Fiscal Year, Monetary Policy Circular No. 22. p. 10.



banks' customers and also not in the best interest of the economy "<sup>869</sup>. The borrowers and debtors alike suffered the fate of financial strangulation with the skyrocketing of the lending rates. The then Governor of CBN criticised the alarming interest rate thus :  
lending rates have been pushed to a height that threatens the life of non-bank corporate sector and ultimately the financial system as well..... And this has happened even though banks have paid relatively low rates on savings deposits. The situation suggests that the liquid banks are employing some collective market power to their immediate advantage<sup>870</sup>.

The CBN therefore in 1989 attempted a removal of the distortion in the interest rate structure especially the wide gulf between the banking deposit and lending rates by reaching an accord with the banks. The accord fixed the spread between the saving deposit rates and lending rates at 7 percentage points and the margin between the prime and the maximum lending rates for each bank at 4 percentage points, while the inter-bank rates were to be at least 1 percentage point below the prime lending rates<sup>871</sup>.

This accord was however cosmetic and palliative. The underlying reasons for the skyrocketing of interest rates were not addressed. The principal problems were inflation of 50.5 per cent in 1989, and the demand management measures designed to fight inflation and stabilise the Naira exchange rate. The mopping up of liquidity by the CBN evaporated all liquidity from the banking system, with many banks becoming cash strapped and registering "interbank market rates as high as between 30 and 40 per cent, just to attract the much-needed deposits"<sup>872</sup>.

<sup>869</sup>. Loc. cit.

<sup>870</sup>. See CBN Governor's Address at the 1989 Annual Dinner of the Nigerian Institute of Bankers quoted in Nwankwo, G. O., *Money and Capital Markets in Nigeria Today*, op. cit., p.28.

<sup>871</sup>. See CBN Brief, Research Department, Series No. 95/04, June 1995, p. 3.

<sup>872</sup>. See Nwankwo, G.O., *Money and Capital Markets in Nigeria Today*. University of Lagos Press. Lagos,(1991), p. 24.

The observed high lending rates of the banks during this period may be explained by the above factors of illiquidity, high interbank rates and inflation. Indeed, the banks were in fact reluctant to lend or grant credit, and charged high interest rates for any lending facilities. The interest rates of the banks although high, were lower than the inflation rate.

The interest rates in 1990 remained in very high region as in 1989. The deposit rates ranged from 17.80 % to 25.40 %, and the lending rates remained stubbornly at 26.00% and 29.00 % respectively. It is surprising that the interest rates witnessed a percentage rise from the 1989 position in 1990, despite the reported lower inflation rate of 7.4% in 1990. It is doubtful that the reported inflation rate actually reflected the real inflation rate in Nigeria for 1990, and in fact, one author<sup>873</sup> claimed that the interest rates ballooned to 45 % per annum and the inter-bank rates reached an all time high point of 50 % and often more. The lending rates catapulted into higher regions causing acute difficulty to borrowers<sup>874</sup>.

The banks exerted their financial leverage over existing debtors to a most unreasonable extent charging the new interest rate on old debts in a "ruthless pursuit of profit"<sup>875</sup> with the sad consequences that most debtors were saddled with exorbitant interest charges which threatened their business and their lives. This extortionist practice has received the judicial approval of the Supreme Court of Nigeria<sup>876</sup>.

<sup>873</sup>. See Umunnaehila, Allwell., op. cit p. 20.

<sup>874</sup>. See Giwa, R. F.. " The Role of Bank Directors in the 1990s" in Innovations, Technology & the Nigerian Finance Sector. ( Papers and Proceedings of the Bank Directors' Seminar, FITC, Lagos, 1990 ) p. 68.

<sup>875</sup>. See Okigbo, Pius.. Essays in the Public Philosophy of Development. Vol.3. op. cit., p. 220.

<sup>876</sup>. See Union Bank of Nigeria Vs Professor Albert Ozigi [1994] 3 N. W. L. R. 385. In this case, the appellant bank was allowed to vary and charge different interest rates on a mortgage loan despite the absence of a clear and unambiguous variation clause in the mortgage deed. The appellant bank's contention that the interest rates on the respondent's loans varied between 1981 and 1989, as result of CBN directives was upheld by the court, in preference to the respondent's argument that the imposition of various rates by the appellant was unilateral variation of their agreement. The Supreme Court in upholding the appellant's submission overruled the concurrent decisions of the High Court and Court of



Perhaps, it must be emphasised however that the unsustainable high interest rates had been propelled by some of the regulatory and monetary contractionary policies of the government and the CBN. Firstly, the complete liberalisation of interest rate at once was precarious, questionable and contrary to the Mckinnon-Shaw hypothesis. Such immediate and unplanned interest rate deregulation destabilises financial market. Hence, in U.S.A<sup>877</sup>, the liberalisation of interest rate was undertaken in stages according to a time-table over a four-year period. Yet in Nigeria, interest rate deregulation occurred in a single day. It may be underscored that the CBN was well aware<sup>878</sup> of the ill-effects of premature deregulation of interest rates, hence its decision to undertake the exercise contrary to its sound judgement may have political undertone. Indeed, the CBN Governor was publicly humiliated "by higher authorities to reverse himself and to publicly change the stand of the Central bank "<sup>879</sup>. Additionally, the interest rate when liberalised attained its high level because the CBN set its MRR at very high level indicating to the banks, its preference for very high interest rate regime.

Further actions of the CBN such as tinkering with the liquidity of the banking system by raising their reserve ratio and swiping the outcropping from the customers'

Appeal in the case that the appellant ought to consult with and notify the respondent borrower of the variation in interest rates. This decision of the Nigerian highest court which bequeaths many debtors with old debts quadrupled by new interest rates, may be assailed on one valid ground. With respect, it seems the court overlooked the changes in the law which in our view frustrates any agreement between the parties on interest rate. The law which governed interest rate at the time the parties entered into the mortgage agreement mandates fixed but variable interest rates, and this interest rate structure was the one contemplated by the parties. Hence, the variation clause was ambiguous and uncertain. However, since 1987, the policy on interest rate adopted by the CBN directly changed the law, and permitted floating and independent interest rates by banks. Thus, the nature of interest rates since 1987 was beyond the contemplation of the parties. The changes in interest rate policy in 1987 affected the substratum of the parties' agreement, and changed the legal position on the issue. The appreciation of this legal situation in our view would have led the court to different conclusion from its decision in the case.

<sup>877</sup>. See Garn St. Germain Depository Institutions Act of 1982.

<sup>878</sup>. See the CBN caution against complete liberalisation of interest rate in Nigeria, CBN. Monetary and Banking Policy , 1986.

<sup>879</sup>. See Okigbo, P.N.C., Essays in the Public Philosophy of Development. Vol. 4. op. cit., p. 99.

deposits for Letters of credit which had hitherto provided the banks with interest free money<sup>880</sup>. Indeed, these actions in combination with other liquidity mopping up measures including withdrawal of government deposits from banks, abolition of foreign assets guarantees for Naira denominated loans, and raising of liquidity ratio culminated in serious liquidity squeeze and unprecedented hike in interest rates<sup>881</sup>.

The actions of the CBN and the government had another effect of exposing some old and new banks to serious liquidity crunch while aggravating the precarious positions of some marginally liquid banks<sup>882</sup>. The affected banks embarked on aggressive deposit seeking programme luring depositors with irresistible "window dressing" interest rates. This development gave rise to Ponzi schemes<sup>883</sup> undertaken by most banks whereby depositors were lured with high interest rates, temporarily financed out of inflow of deposit<sup>884</sup>. The ponzi scheme collapsed when banks started defaulting on the ostensibly money doubling agreements.

The attempt by the government to curb the interest rate upward swing led to the re-introduction of interest rate control regime in 1991 when the maximum lending rate was pegged at 21 percent<sup>885</sup>. The banks responded by reporting the prescribed rates to the regulatory authority as the prevailing rate but charged higher lending rates in the forms of

<sup>880</sup>. Loc. cit.

<sup>881</sup>. See Giwa, op. cit., p. 66.

<sup>882</sup>. See CBN, Economic and Financial Review, Vol. 27, No. 2, June 1989, p. 1.

<sup>883</sup>. Named after Charles or Carlo Ponzi who duped savers in Boston in 1920 promising 50 per cent interest on 45 day deposits, but was later arrested when he defaulted on his manipulative financial promise. see Jose Maria Fanelli, Roberto Frenkel and Lance Taylor. " The World Development Report 1991 : A Critical Assessment " . op. cit.,p .24.

<sup>884</sup>. See Collier, Paul., "Living Down The Past : Redesigning Nigerian Institutions For Economic Growth" (1996) 95 African Affairs No. 380, p. 344.

<sup>885</sup>. See CBN, Monetary And Credit Policy Guidelines 1991. Monetary Policy Circular No. 25, p. 8.



service charges and processing fees that raised the effective cost of funds beyond the recommended maximum<sup>886</sup>.

The interest rate control regime was, however, short-lived as the government reverted to the deregulation of interest rates in 1992 due to persistent criticisms of the interest rate control by both the banks and the organised private sector. The performance of the economy in 1991 with lower GDP growth rate<sup>887</sup> and higher inflation rate<sup>888</sup> than 1990 also compelled the change of policy by the Nigerian government.

With the removal of the ceiling on banks' lending rates in January 1992, the interest rates resumed their upward swing<sup>889</sup>. The average prime rate rose from 21 per cent in 1991 to 44.4 per cent in 1992<sup>890</sup>. The rise in the level of interest rates must be considered against the background of the inflation rate in 1992 which was 44.6 per cent. Thus, the interest rates were at par with the inflation rate.

In 1993, all interest rates were higher at the end of the year than their levels at 1992, and the deposit and lending rates of commercial banks were negative in real term even though merchant banks' lending rates maintained upward trend<sup>891</sup>. The inflationary spiral at 61.4 per cent made most bank deposit and commercial banks lending rates

<sup>886</sup>. See NDIC, 1991 Quarterly, p. 3.

<sup>887</sup>. The GDP growth rate for 1991 was 4.7 per cent as against 8.27 per cent in 1990.

<sup>888</sup>. The inflation rate in 1991 was 13.0 per cent as against 7.4 per cent in 1990.

<sup>889</sup>. See CBN, Annual Report and Statement of Accounts, 1992, p. 14. Savings deposit rates ranged from 13.5 to 25 per cent and the prime rate ranged between 21 and 45 percent. Merchant banks had higher interest rate margins. The average rates on ninety day deposit increased from 18.2 per cent at the end of 1991 to 38.0 per cent at the end of 1992

<sup>890</sup>. Ibid., pp. 31 - 32.

<sup>891</sup>. See CBN, Annual Report and Statement of Accounts, 1993, pp. 2, 30-31. The saving interest rates ranged between 19.2 per cent and 16.7 per cent. The commercial banks average prime rates and maximum lending rates were 36.1 per cent and 39.1 per cent respectively. Merchant banks' average prime rates was 59.1 per cent and the average maximum lending rate was 60.5 per cent.

negative in real terms. The inter-bank rates also rose and defaults in the market attained a higher level<sup>892</sup>.

The underlying factors for the high level of interest rates in 1992 and 1993 according to the CBN were inter alia use of stabilisation securities for reducing excess liquidity, oligopolistic structure of the banking system, arbitrage activities, persistent depreciation of Naira exchange rate, high inflationary expectations, rapid spread of insolvent and distressed financial institutions leading to high risk premium, competitive mobilisation of funds for foreign exchange transactions, and monetary policy externalities<sup>893</sup>. It seems in a way that the causes for the rise in interest rates went beyond the mere fact of deregulation.

The Nigerian government however thought otherwise and re-imposed interest rate control by pegging the maximum lending rate at 21 per cent<sup>894</sup> in 1994. The regulated rates were substantially negative in real terms since they were below the inflation rate <sup>895</sup>at 57.0 per cent.

The regulated interest rate which did not reflect the market condition with inflation rate at 72.8 per cent continued in 1995, and compelled marginal banks to solicit funds at higher cost<sup>896</sup>. A combination of these effects and the general lull in the

<sup>892</sup>. Ibid.,p. 27.

<sup>893</sup>. See CBN, Annual Report And Statement of Accounts, 1992, p. 14. See also CBN, Annual Report And Statement of Accounts, 1993, p. 2.

<sup>894</sup>. See CBN, Monetary, Credit And Foreign Exchange / Trade Guidelines 1994, Monetary Policy Circular No. 28.

<sup>895</sup>. See CBN, Annual Report And Statement of Accounts, 1995,p. 14. The Nigerian banks as usual reported full compliance with the interest rate control even though effective deposits and lending rates were higher than reported as cost of funds were generally high in the unofficial market .

<sup>896</sup>. Loc. cit.



economy amidst national and international pressure forced the government to revert again to a regime of deregulation of interest rates<sup>897</sup> with effect from October 1996.

## 8.6 Conclusions

The effects of banking deregulation in Nigeria have rightly been described as mixed<sup>898</sup>. The banking system undeniably has witnessed a phenomenal growth in terms of the institutions, market participants, volume and complexity of operations, types and nature of products and technological innovations. The horizontal and vertical growths witnessed by the banking system together with its efficiency in the ten years of banking deregulation are historic .

However, the macroeconomic instabilities and the other policy inconsistencies have invested the banking system with escalating and often negative interest rates, and caused a foreign exchange speculative flurry. The privatisation of banks which is a most worthy objective has been riddled with controversies and corruption. Nevertheless, observers rated the merits of financial deregulation of the Nigerian banking system over its visible evils. The Director of CBN Research, Dr Ojo contends that on " balance, ..... however, there is no gainsaying the fact that the advantages of deregulation have so far out-weighed the negatives effects, given the background of the economic problems which led to the adoption of SAP "<sup>899</sup>. It has also been asserted that the benefits of banking deregulation in Nigeria are much higher than the costs since the gains have impacted positively on the industry and the nation's economy<sup>900</sup>.

<sup>897</sup>. See Newswatch, 26 June 1995, p. 11. See also CBN. Monetary. Credit. Foreign Trade And Exchange Policy Guidelines For 1997 Fiscal Year, Monetary Policy Circular No. 31, p. 9.

<sup>898</sup>. See Oycjide. (1993). op. cit., p. 6.

<sup>899</sup>. See Ojo, M. O., " Deregulation In the Nigerian Banking Industry : A Review and Appraisal " CBN Economic and Financial Review, Vol. 29, No. , March 1991, p. 12.

<sup>900</sup>. See Okafor, L. E.. (1993). op. cit., p. 10.

It cannot be denied, however, that the high hopes of financial deregulation had not been realised<sup>901</sup>. Indeed, the perennial deterioration of the Nigerian economy is often attributed to the adoption of the financial deregulation programme, and the banking system is now in deep distress.

<sup>901</sup>. See The Nigerian Vanguard, 18 June 1997, p. 3.



## **CHAPTER IX**

### **BANK FAILURE IN NIGERIA : FROM DEREGULATION TO REGULATED RECEIVERSHIP.**

#### **9.1 Introduction**

The varied consequences of financial deregulation in Nigeria have been examined in the preceding chapter. However, the most devastating consequence is the failure of some banking corporations within the short span of the liberalisation phenomenon. The fact that no banking failure occurred at all in the country<sup>902</sup> throughout the era of interventionist regulation (1968-1985) makes the massive failure of banking corporations the greatest weapon of attack against the virtues of the banking liberalisation by its critics. This is the context in which bank failures constitute a significant consequence of banking deregulation in Nigeria.

This chapter which consist of five sections is devoted to the issue of bank failure in Nigeria. The first section describes the magnitude of banks and financial institutions' failure in the country. An attempt is made in the second section to identify the major causes of bank failure in Nigeria, and the regulatory and judicial reactions to the phenomenon of bank failure are analysed in the third section. The conclusions are contained in the fifth section.

#### **9:2 The Deluge of Failed Banks and Financial Institutions**

The presence of distressed banks first became noticeable in 1989 when the supervisory authorities commenced fire fighting resuscitation programmes for them<sup>903</sup> especially through lender of last resort support and loans from the NDIC. Neither the generous lifeboat operations by the CBN and NDIC, nor the reformed policies and rules

<sup>902</sup>. See Nwankwo, G. O., *Prudential Regulation of Nigerian Banking*, University of Lagos Press, Lagos. (1990), p. 57.

<sup>903</sup>. See NDIC, *Annual Report and Statement of accounts*, 1992, pp. 44 - 45.

was able to stem the tide of banking distress. Indeed, the number of distressed banks<sup>904</sup> that was 8 in 1991, rose geometrically to 16 in 1992, preluding cataclysmic banking crises that engulfed the Nigerian banking system like a ranging summer inferno defying all ill-attempt solutions. The year 1993 witnessed an increase<sup>905</sup> in the number of the distressed banks to 27, representing a quantum leap of 68.7 per cent increase over the number in 1992.

The distress in the banking system however remained unabated with a rise in the number of the distressed banks<sup>906</sup> to 42 in 1994 and as at the end of 1995, the figure peaked at 51 distressed banks<sup>907</sup>. The NDIC on the other hand presented a more alarming picture stressing the "increase in the number of distressed banks from 55 in 1994 to 60 in 1995"<sup>908</sup>. This means that half or 50% of the 120 banks which constitute the Nigerian banking system were in distressed at the end of 1995. The CBN<sup>909</sup> found that 21 licensed banks were technically insolvent as against 13 of such banks in 1994. In 1997, the number of distressed banks stood<sup>910</sup> at 47.

The banking distress although wide ranging and damaging is smaller in comparison to the ravaging financial distress that plagued the whole financial system. In 1994, 31 distressed financial companies and 32 distressed community banks were identified, while 118 other finance companies were in default of matured obligations<sup>911</sup>. The financial

<sup>904</sup>. See CBN, Annual Report and Statement of accounts, 1992, p. 153.

<sup>905</sup>. See CBN, Annual Report and Statement of accounts, 1993, p. 6.

<sup>906</sup>. See CBN, Annual Report and Statement of accounts, 1994.

<sup>907</sup>. See CBN, Annual Report and Statement of accounts, 1995, p. 166.

<sup>908</sup>. See NDIC, Annual Report and Statement of accounts, 1995, p.47.

<sup>909</sup>. See CBN, Annual Report and Statement of accounts, 1995, p. 5.

<sup>910</sup>. See CBN, Annual Report and Statement of accounts, 1997, p. 4.

<sup>911</sup>. See CBN, Annual Report and Statement of accounts, 1993, p. 18.



crises continued in 1995 with 200 distressed and potentially distressed community banks, and the revocation of the licences of 14 finance houses while the value of the reported cases of default in honouring matured obligations by finance companies increased from N1,634.7million in 1994 to N2,010.1 million<sup>912</sup>. In 1997 the licences of 353 community banks and 97 primary mortgage institutions were revoked<sup>913</sup>. The Deputy-Governor of the CBN, Victor Odozi, aptly summarises the state of the Nigerian banking and finance industry thus:

Indeed, the finance sector is in deepening distress which manifested in the large number of technically - insolvent and, in some cases, failed institutions; liquidity problems; defaults in meeting depositor / creditor obligations; large portfolio of non-performing credits; and shareholder/ Boardroom conflicts<sup>914</sup>.

### **9.3 Bank Failure : Some Rationalisation**

A number of varied and diverse reasons have been posited for the financial crises which enveloped the banking system. Some of the causes identified by the regulatory authorities are micro-economic instabilities, policy -induced shocks such as withdrawal of government deposits, uses of stabilisation securities, merging of banks' forex and trading accounts, hiking of minimum paid-up capital, poor and deteriorating asset quality arising from large portfolios of non-performing credits, mismatch of assets and liabilities, over trading , bad management and insider abuses<sup>915</sup>.

<sup>912</sup>. See CBN, Annual Report and Statement of accounts, 1995, pp. 19 & 168.

<sup>913</sup>. See CBN, Annual Report and Statement of accounts, 1997,p. 4.

<sup>914</sup>. See Odozi, V. A.. " Keynote Address " in Restructuring The Nigerian Financial System For Stability And Development , (Papers and Proceedings of the Bank Directors' Seminar, FITC, Lagos, Nigeria, 1994) p. xvii.

<sup>915</sup>. See CBN, Annual Report and Statement of accounts, 1992. p. 6; see also CBN, Annual Report and Statement of accounts, 1993, p. 18.



The interviews conducted reveal other significant causes. Mr Adeyemi Osinubi, the former chief legal officer of the defunct National Bank of Nigeria , answering a question on the causes of bank failures, contends :

Political system is the major cause of bank failure. Emphasis placed on political influence in Nigerian polity affected the banking system. Most of the banks were headed by indigenes within the last quarter century. Nigerians believe they should get whatever they can get in such position. Since there is no security of office, officials compromise their positions to their bosses who passed instruction on phones. Political parties influenced their members who are board members who will in turn influence the management which has a limited ability to refuse to carry out such instructions. Hence, funds and loans, overdraft are given or allowed without strict compliance with the conditions for ensuring the repayment of the loans..... . Bank officials are not in position to resist management officers because of job insecurity.....<sup>916</sup>

This view received credence from the fact that of the seven banks taken over by the CBN at the inception of the financial crises, six were state- owned banks. Indeed, most state-owned banks and even some Federal Government owned banks are either acquired by CBN or in deep distress now. The dominance of political influences and underpinning factors like prebendalism, patrimonialism, clientelism and cronyism are prominent among the underlying causes of the failure of these government-owned banks.

The NDIC<sup>917</sup> indeed identified ineffective management as one of the major causes of financial distress of the state government owned commercial banks in 1990 . According to the NDIC, "(S)ome of these banks were characterised by inept management whose tenure of office were unstable. Appointment to the board and top management positions in these banks were usually based on criteria other than merit..... Board members were found to be more interested in the benefits and privileges conveyed by board membership than in the affairs of the bank"<sup>918</sup>.

<sup>916</sup>. Private interview in Lagos on 1/6/97.

<sup>917</sup>. See NDIC, Annual Report and Statement of accounts. 1990, p. 27.

<sup>918</sup>. Loc. cit.



In a reply to a question on causes of bank failure, Mr Justice M.A. Ope-Agbe, the presiding judge of the Failed Bank Tribunal Zone II, Lagos, avers :

There is internal factor. Internal abuse by employees of the bank - from the M.D, G.M, to the managers. The one pronounced is granting un-authorised credit facility. In most cases, some banks have limits for credit which form bank policy..... . One finds that in many cases, those without authority grant credit far beyond their limit without approval<sup>919</sup>.

The learned tribunal chairman characterises the problem as the "human factor" and opines that the factor must be addressed while the environment must be sanitised. This opinion was corroborated by a high-ranking official of the CBN who identifies " internal mismanagement within the banks, mismanagement of funds, and internal wrangling " as the key causes of bank failures<sup>920</sup>. Another top-ranking CBN official in a separate interview bemoaned the corruption in the banking system asserting that " (W)e have two departments : Supervision and Examination . There is corruption in the two departments which give clean report to a bank even though there is a problem "<sup>921</sup>. The President of the Chartered Institute of Bankers of Nigeria and former Executive Director of the NDIC, Dr Wole Adewunmi although attested to the integrity of the NDIC supervisors during his tenure at the NDIC, however berated the competence and capabilities of the supervisors both at the CBN and NDIC and confirms that "(T)hey (supervisors) collect bribes. Both NDIC and CBN "<sup>922</sup>.

A discernible fact from these assertions is the prevalence of human factor either due to internal abuses of banks or regulatory connivance of supervisors in the distress

<sup>919</sup>. Private interview in Lagos on 13/6/97.

<sup>920</sup>. Private interview with Dr X at Abuja on 11/6/97. This CBN officer granted the interview on a condition of strict anonymity, hence described throughout this work as " Dr X ". The fear of reprisals by the ruling military junta underscores the request for anonymity.

<sup>921</sup>. Private interview with Chief Z in Lagos on 22/5/97. This CBN officer also granted the interview on the condition of strict anonymity, hence described throughout this work as "Chief Z ". The fear of reprisals by the military government equally informed this request.

<sup>922</sup>. Private interview in Lagos on 17/6/97.



pervading the financial landscape. The underlying reason for this cancerous human factor has been located in the motivating spirit of some bank investors. In the words of Allwell Umunnaehila in his 'Bank Failures In Nigeria', "For such investors, access to credit was easily guaranteed for them, their businesses and that of their friends and acquaintances especially in Nigeria where laws or controls are hardly obeyed . Even government functionaries favoured such investors in exchange for loans"<sup>923</sup>.

Perhaps this explains the reason for the predominance of insider abuses in the new private banks since it stands to reason that bank officers would strive to satisfy their benefactors, and bosses - the investors and their cronies. It must be underscored that the job security of many bank officers also depends on their rapport with investors. An uncooperative bank officer stands no chance of retaining his job for long. Indeed, the study of sampled cases concluded by the Failed Bank Tribunal Lagos Zone II confirms the roles of investors' overbearing influences, and cronyism in destabilising some of the failed banks. A good illustration is provided by an analysis of one of the important cases<sup>924</sup>.

In the criminal case of the Federal Republic of Nigeria Vs. Lord Chief Udensi Ifegwu & 3 Ors<sup>925</sup>, the second, third and fourth accused persons while being the managing director and managers of the defunct Alpha Merchant Bank granted an unauthorised credit facilities of the sum of \$2,962,062.89 equivalent to N242,889,156.98, to a company owned by the first accused person , Dubic Industries Limited. The facilities were granted

<sup>923</sup>. See Umunnaehila, Allwell., op. cit., p. 18.

<sup>924</sup>. See Suit No. FBFMT/ L / Z II / 7 / 95 (Unreported Decision of the Failed Bank (Recovery Of Debts)And Financial Malpractices In Banks Tribunal Lagos Zone II of 8 of November 1996). In the second case, Nigeria Deposit Insurance corporation Vs. Marissa Investments Limited & 3 Ors, in which judgment in the sum of N24,625,814.23 and interest was awarded against the 1st and 2nd respondents, and a further sum of N20,000,000.00 and interest was granted against the 1st, 2nd, and 4th respondents, the evidence revealed that the unsecured facilities were granted based on business arrangement and personal communications between the second respondent who is the chairman of the first respondent and the Alpha Merchant Bank's managing director.

<sup>925</sup>. See Appeal No. SAT / FBT / 273 / 96 ( Unreported Decision of the Special Appeal Tribunal, Lagos dated 29 of May 1997 ).



by permitting the first accused person to over-utilised foreign exchange for which he did not provide equivalent Naira to cover the amount. The most interesting revelation however is that the first accused person is the largest shareholder and a non-executive director of the defunct bank. The second accused person, who was the managing director of the defunct bank at the material time, was also the loan relationship manager of the first accused person.

There were no documents showing that the first accused person applied for any loan and the bank's account did not reflect the true state of the first accused person's account. Indeed, it was discovered that the defunct bank's management policy was to falsely alter its account books and "tell lies to CBN or NDIC the regulatory authorities"<sup>926</sup>. The accused persons were found guilty by the Failed Bank Tribunal and sentenced to three years imprisonment each without an option of fine. The morale of this case is that with the highest shareholder and the managing director of the defunct bank as the leading "participes crimines"<sup>927</sup>, it is inferable that no officer of the defunct bank can challenge or prevent them from carrying out their nefarious activities. Several other cases underscore the role of insider abuse<sup>928</sup> and cronyism<sup>929</sup> in Nigerian bank failure.

<sup>926</sup>. Ibid., p. 8.

<sup>927</sup>. Meaning parties to a crime.

<sup>928</sup>. Some of the cases on insider abuse may be cited. one Alhaji S. Bello Abubakar, the managing director of Gamji Bank, was convicted for fraudulently misappropriating the bank's fund amounting to N57.5 million naira.( Unreported judgement of Justice R. Ikeje dated 14/9/95); Also, the Failed Bank Tribunal convicted Dr Onwochei Odogwu, the chairman of the liquidated Kapital Merchant Bank for massive insider abuse of the bank, and he was sentenced to a total of twenty and half years imprisonment. (Unreported judgement of Failed Bank Tribunal, Benin Zone, dated 26/2/96 ); In yet another case, a director of Group Merchant Bank, Mr Christopher Anyaegbunam, was found guilty of fraudulently authorising the grant of a loan of the sum of N11million naira to his company, Cobik Supplies, without disclosing his interest in the said company. (See The Guardian On Sunday, March 24, 1996, p. B3 ).

<sup>929</sup>. See Suit No. FBFMT / L / Z II / 02 / 96 (Unreported Decision of the Failed Bank (Recovery of Debts) And Financial Malpractices In Banks Tribunal Lagos Zone II of 22 of August 1996).In the first of the cases, Nigeria Deposit Insurance Corporation Vs. Lion Investments Ltd & 5 Ors. where judgement was entered against the 1st, 2nd, and 3rd respondents for the sum of N8,342,131.14 being debt owed to the Alpha Merchant Bank,(a failed bank ) it was revealed that the unsecured outstanding loans were granted to the first respondent company because of the personal relationship between the then managing director of the defunct bank and the 2nd respondent who is the chairman and a director of the first respondent.



The magnitude of the human factor manifested in the various insider abuses in the banks can be gleaned from the variety and high incidence of fraudulent practices perpetrated in the banking system. A detailed information on the scale and level of fraud in the Nigerian banking system is contained in Appendix VIII herein. These practices include unauthorised overdrafts, posting of fictitious credits, diversion of unutilised foreign exchange, fraudulent transfers and withdrawals, cheque kiting, alteration of cheques, blotting of account numbers on cheques and forging signatures, presentation of forged cheques, inflated expenditures, suppression of loan applications or accounts, withdrawal and suppression of cleared cheques, fraudulent manipulation of CBN clearing cheques, and transfer of customers' lodgement to staff account<sup>930</sup>.

The total amount involved in the frauds and forgeries concerning commercial banks increased from N788,798.1 in 1990 to N351.93 million and N2,655.71 million in 1992 and 1994 respectively<sup>931</sup>. The total amount respecting frauds and forgeries at merchant banks rose from the aggregate N15.4 million in 1990 to N59.82 million and N743.68 million in 1992 and 1994 respectively<sup>932</sup>. The total amount of frauds and forgeries in respect of the two categories of banks dropped in 1995. The amount fell significantly to N1,006.28 million with regard to the commercial banks, and an incredible N5.08 million in respect of the merchant banks<sup>933</sup>. (see Appendix VIII).

The precipitous fall in the total amounts involved in banking frauds and forgeries in 1995 has been attributed to the implementation of the Failed Banks (Recovery of Debts)

Indeed, it emerged that the management of the defunct bank had used some financial engineering to camouflage the indebtedness of the 1st respondent and some other companies having similar problem.

<sup>930</sup>. See NDIC, Annual Report and Statement of accounts, 1992, p. 41. See further NDIC, Annual Report and Statement of accounts, 1995, p. 39.

<sup>931</sup>. See NDIC, Annual Report and Statement of accounts, 1990, p. 50; see further NDIC ( 1992 ), Ibid., p. 37; NDIC ( 1995 ), Ibid., p. 38.

<sup>932</sup>. See NDIC (1990), Ibid., p. 51; see further NDIC (1992), Ibid., p. 38; NDIC (1995), Ibid., p. 39.

<sup>933</sup>. See NDIC (1995) . Ibid., pp. 38 - 39.



And Financial Malpractices In Banks Decree in 1995 through the activities of Failed Bank Tribunal in prosecuting and punishing apprehended bank fraudsters<sup>934</sup>. In the words of the CBN :

In less than one year of its implementation, the Decree made a significant impact as substantial debts and properties were recovered, while some culprits were brought to book and sanctions in accordance with the provisions of the law imposed on those found guilty. More importantly, the actions had sent clear and strong signals that gross insider abuse and breach of fiduciary duties would be dealt with in accordance with the law<sup>935</sup>.

A deduction from the above discussion is that the two major factors precipitating bank failures in Nigeria may be located in the political system and in the human factor. The political system underlines the politicisation of the banking activities of the government owned banking institutions that failed in the country, while the same political exigencies are responsible for the policy induced shocks that caused the illiquidity and insolvency of some failed banks.

It is a recorded fact that the withdrawal of government deposits from banking corporations imposed liquidity crises on many banks and "people say it was the last straw that broke the camel back of some banks e.g. National Bank of Nigeria, although there have been underlying long term causes"<sup>936</sup>. The issuance of stabilisation securities to mop up excess liquidity originating from government's fiscal rascality and monetary exuberance had equal effects of destabilising the liquidity of some banks and foisting a situation of illiquidity that may result in bank failure<sup>937</sup>.

Furthermore, the same political factors ensured the total emasculation of the regulatory authorities, since all final decisions on discipline and control of failing banks

<sup>934</sup>. Ibid., p. 38.

<sup>935</sup>. See CBN, Annual Report and Statement of accounts. 1995. p. 168.

<sup>936</sup>. Private interview with Dr Wole Adewunmi on 17/6/97 in Lagos.

<sup>937</sup>. See CBN, Annual Report and Statement of accounts. 1995. p. 162.

and erring officers and investors are vested in the political authorities - the Head of State and Minister of Finance. This point may be underscored by the legal reality that no bank in Nigeria can be assumed, closed, divested or liquidated without the express approval of the Head of State<sup>938</sup>.

Section 34(1) of 1991BOFID provides in this respect inter alia that " the Bank may, with the approval of the President, assume control of the whole of the property and affairs of the bank, carry on the whole of its business and affairs or assume control of such part of its property, ...". In addition, section 36 of the same law stipulates inter alia that "...the Bank may, with the approval of the President..." apply to the Federal High Court for an order of purchase, acquisition, or winding up of a failed bank or revocation of its licence. The revocation of banking licences, and disciplinary measures against abusive bank managers must also be authorised by the Head of State<sup>939</sup>.

Thus, where the Head of State as the case in Nigeria, refuses<sup>940</sup> to approve the closure of unviable and distressed banks, the regulatory agency is simply powerless. A Deputy-Governor of the CBN, Victor Odozi, put succinctly that :

The issue was raised whether, in fact the CBN has adequate regulatory and supervisory capacity. I say that on the basis of the laws that existed we had inadequate capacity, we had inadequate powers because we had to get the approval of the President to liquidate a terminally distressed institution<sup>941</sup>.

Indeed, it is this valid fact of the regulatory subservience of the CBN to the political authorities in Nigeria, that made it inappropriate to attribute the bank failure in the country to institutional failure. Institutional failure may occur where a regulatory

<sup>938</sup>. See SS. 34 & 36 of 1991 BOFID as amended.

<sup>939</sup>. See SS.33 &36 of 1991 BOFID as amended.

<sup>940</sup>. See The Punch, 16 May 1997. p. 11.

<sup>941</sup>. See Odozi, Victor., " Proceedings ". in Ayua and Owasanoye (eds. ), op. cit., p. 83.



agency had been unable by act of commission or omission to discharge its functions under its constitutive law or other enabling instrument. It seems however, as in Nigerian case, that where the decision making powers for a regulatory agency's functions are vested in an exterior body over which the regulatory agency has no control, and which exterior body refuses to take necessary decisions conditional for the regulatory agency's functions, the regulatory agency should be absolve of any blame for the consequences of the decision making failure.

The CBN in the Nigerian case could therefore not be blamed for the non-closure of terminally distressed banks, or absence of disciplinary measures against abusive managers and the non-resolution of the financial crises in the country. The decision making powers for all of these actions are vested by law in the Head of State, who must not only authorise these regulatory actions but possesses the power to overrule<sup>942</sup> any decision by the CBN. Specifically, section 37(3) of BOFID provides that an order by the CBN against a failed bank or its director, manager or officer "may either be confirmed, modified, altered, varied or replaced by the President". Perhaps it may be added that the same political factors underline some of the obvious lapses of the supervisory functions of the CBN.

Indeed, the failure of CBN supervisors to detect distress signals in some of the failed banks despite periodic examinations and take remedial actions has been condemned by many commentators<sup>943</sup>. Although, personal corruption of the supervisors may be blamed, the predominance of political corruption cannot be discountenanced. The political nature of the banking regulatory powers allowed political influence to dominate the regulatory and supervisory functions of the CBN. Furthermore, the politicisation of banking regulatory power, deprived the CBN official and supervisors of their regulatory leverage over bank owners and managers, since the bank owners and managers could

<sup>942</sup>. Sec S.37 (3) of 1991 BOFID as amended.

<sup>943</sup>. See Ekundayo, Femi.. (former President of Chartered Institute of Bankers of Nigeria). The Guardian On Sunday, 10 March 1996, p. A.15.



bypassed the CBN, and obtained favourable regulatory decisions from the political authorities<sup>944</sup>.

These facts are reinforced by the political structure of bank ownership and control in Nigeria. Many banks in the country are /were owned by high-ranking military officers<sup>945</sup>, and influential politicians. This structure enabled the bank owners to put direct pressure on the political authorities responsible for banking regulations. A number of examples<sup>946</sup> can be cited in respect of many failed banks.

These examples demonstrate the political relationship between bank owners and client, and the political authority that regulated banks, underscoring the effects of such relationship in shielding the named banks from prompt regulatory actions. The banks in the examples and many other, were assumed by the CBN only when General Babaginda departed from the Nigerian presidency. Many of the bank owners and debtors like Senator Adewunmi and Chief Nzeribe were detained or arraigned before the Failed Bank Tribunal after the tenure of General Babaginda.

Perhaps, it may be highlighted that those bank closed, and whose owners and debtors were punished, were those out of political favour with the then Nigerian ruler, General Abacha<sup>947</sup>. The regulatory actions against them were more of political reprisals,

<sup>944</sup>. See Iyanda.Olukunle., *op. cit.*, p. 5.

<sup>945</sup>. See Appendix XI herein.

<sup>946</sup>. One of the failed banks, the Century Merchant Bank had as its chairman, Alhaji Bashir Othman Tofa, who was one of the two presidential candidates for the 1993 Presidential elections in Nigeria. (See NDIC, Annual Report And Statement of Accounts, 1992, p. 86). Alhaji Tofa was also stooge and political henchman of General Babaginda, who allegedly sponsored him. The result of this political nexus was that Century Merchant Bank was not declared as a failed bank until General Babaginda left office. Another example is that of Chief Nzeribe, one of the greatest debtors to the Alpha Merchant Bank. Yet, the said Chief Nzeribe was a political stooge of General Babaginda, and founded and financed the Association For Better Nigeria, that engineered the annulment of the 1993 Presidential elections by General Babaginda. Thus, Chief Nzeribe was a close political ally of General Babaginda. The judicial fact that Chief Nzeribe obtained funding for his political activities from his indebtedness to Alpha Merchant Bank, ensured that Chief Nzeribe used his political influence to protect the defunct bank from any regulatory action by the deposed General.

<sup>947</sup>. See The News, 25 March 1996, p. 31; see also Thisday, 17 March 1996, Vol. 2, No. 330, p. 9. The penetrative influence of political factor in bank failure in Nigeria is further demonstrated by the fact that a



than corrective measures. Hence many insolvent banks and abusive owners remained<sup>948</sup> within the banking system protected by General Abacha .

The banking political scenario has an implication for the CBN official and supervisors. The CBN officers were/ are intimidated by the political influence of bank owners and clientele, with the result that many fraudulent acts and regulatory lapses of politically connected bank insiders are ignored or suppressed. Additionally, the knowledge that the bank owners can neutralise any adverse supervisory reports against their banks, must have encouraged passivity from the CBN officers.

Indeed, passivity may be a rational course of action for two valid reasons. First, the Nigerian experience suggests that political authority will not act on a damaging supervisory report against any bank with political backing. Thus, the CBN officer may reasonably question the utility of any incriminating report, when it would not procure any positive result. Second, a confrontational CBN officer may lose his job for gross insubordination to a political heavyweight. The significance of these points is that political corruption and control dominated the supervisory lapses of CBN, and the regulatory and supervisory quagmire of the CBN should be seen in its political context rather mere institutional failure.

The human factor lies in insider abuses and corrupt supervisors. The incentive of many bank promoters to use their banks as avenues for cheap credits or subsidies fuelled the spiral of criminal lending, frauds, and forgeries often masquerading as "financial engineering" in the Nigerian banking system. The cankerworm of insider abuse is so infectious that it has entangled even the model bankers of the bygone era. Hence, many

foremost traditional ruler in Nigeria, the Sultan of Sokoto, Alhaji Dasuki was removed from his throne for many reasons including his roles in failure of some banks.

<sup>948</sup>. See Senator A. Adesanya, " Yoruba Nation Endangered?", Sunday Concord, 15 February 1998, p. 13.



past presidents of the Chartered Institute of Bankers of Nigeria and leading authorities on Nigerian banking are languishing in prisons for alleged insider abuses of their banks<sup>949</sup>.

The number of banks' owners, shareholders, directors and managers detained, prosecuted, convicted, imprisoned, or removed and blacklisted signifies a high level of sophisticated misconduct and moral decadence existing in the banking system. Indeed, the reality of the banking dilemma is as postulated by Mr Adeyemi Osinubi thus "when you look at bank failure in Nigeria, the problem is not the absence of knowledgeable bankers, but lack of commitment which may be a product of dishonesty or political system itself"<sup>950</sup>.

One may assert that while political corruption and opportunism fuelled the collapse of most government owned banks, the human factor manifested in the massive insider abuses and corrupt regulatory supervisors facilitated the capitulation of the new generation private banks. And in both instances, the role of political ineptitude and regulatory inertia remains decisive as a constant factor.

#### **9.4 Regulatory and Judicial responses to Bank Failure**

The CBN reacted to the development by reforming the policies and rules on capital adequacy and prudential guidelines for the banks<sup>951</sup>. The prudential guidelines were necessitated by the increasing market risk and exposures which attended banking

<sup>949</sup>. The incarceration of Dr Femi Adekanye and Mr Ralph Osayameh, both past presidents of Chartered Institute of Bankers of Nigeria, for alleged banking malpractices is a vivid example. see in this respect "The Fall of the Banker ", The Guardian on Sunday, 24 March 1996, pp. 31 - 33.

<sup>950</sup>. Private interview of 1/6/97.

<sup>951</sup>. In March 1990, the CBN adopted the Basle Committee's recommended international standard of measurement of capital adequacy. The Nigerian apex bank further prescribed new prudential guidelines for the licensed banks in November, 1990. The Nigerian Accounting Standards Board ( NASB ) in October 1990, also issued the " Statement Of Accounting Standard : Accounting By Banks And Non-Bank Financial Institutions ( Part I ) " for use by preparers and users of published financial statement of banks. The Statement stipulated standard to be observed in financial statements preparation in three key areas namely income recognition, loss recognition, and balance sheet classification. The licensed banks were directed to comply with the dictates of the Statement which was designed to ensure reliability , factuality and comparability of banks' financial statements.



deregulation, and the need for protecting depositors and the financial market<sup>952</sup> from imprudent banking operations. The prudential guidelines stipulated minimum requirements for asset classification, provisioning, disclosure, treatment of accruable interests, and off-balance-sheet engagements<sup>953</sup>.

In an ill-fated attempt to rescue the distressed banks from financial distress, the CBN in 1993 enunciated measures of regulatory forbearance such as re-admission of distressed banks into the foreign exchange market subject to periodic performance review, waiver of monetary penalties on non-compliance with statutory minimum capital requirement by distressed banks, and imposition of a uniform rate of 35 per cent per annum on the overdrawn accounts of all distressed banks<sup>954</sup>.

In addition to the regulatory forbearance measures, the CBN also constituted Interim Management Boards (IMBs) to undertake the management affairs of 7 (seven) distressed banks consisting of six state owned banks and one private bank<sup>955</sup>. In pursuant to the authority of the Head of State who is the sole authority<sup>956</sup> on the termination of banking operations of a banking corporation in Nigeria, the CBN assumed the control of the management of 8(eight) commercial and 9(nine) merchant banks out of a total 22 (twenty-two) approved distressed banks for take-over action by the Head of State.

The CBN<sup>957</sup> in September, 1995, assumed the management and control of 17(seventeen) commercial and merchant banks<sup>958</sup>. Three distressed but Federal

<sup>952</sup>. See NDIC, Annual Report And Statement of Accounts, 1990, p. 12.

<sup>953</sup>. See also CBN Circular No. BSD/ CB/23/VOL. 1/8 of 15 May 1991.

<sup>954</sup>. See CBN, Annual Report And Statement of Accounts, 1993, p.164.

<sup>955</sup>. Loc. cit.

<sup>956</sup>. See S. 12 of BOFID 1991.

<sup>957</sup>. See CBN, Annual Report And Statement of Accounts, 1995, pp. 166 & 168.

<sup>958</sup>. Amicable Bank, Credite Bank, First African Trust Bank, Lobi Bank, Nigeria Universal Bank, North - South Bank, Premier Commercial Bank and Progress Bank of Nigeria, and the listed merchant banks viz Abacus Merchant Bank, Century Merchant Bank, Great Merchant Bank, Group Merchant Bank, Ivory



Government owned merchant banks namely Continental Merchant Bank Limited, Nigerian Merchant Bank Limited, and ICON Limited - Merchant bankers were slated for merger by the Bureau of Public Enterprises<sup>959</sup>. Two other banks comprising Gamji Bank Nigeria Limited and Metropolitan Merchant Bank Limited that had commenced self-restructuring and recapitalisation were given grace of time to conclude the exercise<sup>960</sup>.

Prior to these assumption and take-over control measures, the liquidation of five banks had been undertaken by the CBN. In 1994, four banks consisting of Kapital Merchant Bank Limited, Financial Merchant Bank Limited, Alpha Merchant Bank Plc, and United Commercial Bank Limited had their licences revoked, and in June 1995, the Republic Bank Limited<sup>961</sup> joined this growing list of defunct banking corporations<sup>962</sup>.

The NDIC had commenced the payment of insured deposit claims to the depositors of the above -mentioned five liquidated banks. In 1994, the NDIC paid a sum of N20.6 million to 877 depositors, and with improved awareness of the deposit insurance payment activities, the sum of N49.05 million was paid in 1995 to 2,660 insured depositors of the five liquidated banks<sup>963</sup>.

It must be underscored that the bank failures and distress had persisted with the NDIC<sup>964</sup> reporting the existence of holding actions imposed as at the end of 1995 on 22 Merchant Bank, Merchant Bank of Africa, Nationwide Merchant Bank, Prime Merchant Bank and Victory Merchant Bank .

<sup>959</sup>. See CBN, Annual Report And Statement of Accounts. 1995, p. 19.

<sup>960</sup>. Loc.cit.

<sup>961</sup>. See CBN, Annual Report and Statement of accounts. 1995, p. 166.

<sup>962</sup>. The CBN also obtained a High Court order in 1995 to acquire the named banks : African Continental Bank, Pan African Bank, Merchantile Bank, Cooperative and Commerce Bank, and New Nigerian Bank . These banks were all acquired at a nominal fee of N1.00 each, in addition to the oldest indigenous bank in the country, the National Bank of Nigeria which had earlier been acquired in 1994 by the CBN. All the acquired banks were slated for sale to interested investors and the regulatory authorities had commenced the review of the bids at the end of 1995.

<sup>963</sup>. see NDIC, Annual Report and Statement of accounts. 1995, p. 49.

<sup>964</sup>. Ibid., p. 48.



(twenty-two) commercial and 15(fifteen) merchant banks , while "Twenty - three (23) other banks were being monitored closely as a result of signs of potential distress shown by them during the year"<sup>965</sup>. The CBN had taken steps to curb the high incidence of insider abuses. In this respect, the CBN conducted a comprehensive review of insider credits in the banking system and at the end of the review imposed wide ranging punishment on abusive insiders including the removal or blacklisting of 178 directors (serving and ex-directors) and blacklisting of 75 other insiders<sup>966</sup>. Indeed, the CBN removed the Board of Directors of Commercial Trust Bank Ltd for insider abuse<sup>967</sup>, and further mandated all insiders with non-performing credits to liquidate such debts by end of December, 1995 or be removed, blacklisted and reported to the police for investigation and prosecution<sup>968</sup>.

These facts put into sharp perspective the underlying reason for the high volume of cases pending before the Failed Bank Tribunal in Lagos which is reflective of the serious financial crisis that engulfs the Nigerian banking system.

It must be emphasised that each Tribunal has civil and criminal jurisdiction<sup>969</sup> and all the civil matters are brought in respect of debts owed to failed banks by their liquidators or receivers, and the criminal matters commenced by the government in respect of banking frauds against failed banks. The Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree<sup>970</sup> empowers the Head of State to constitute such number of Tribunal as he deems necessary to be known as the Failed Banks (Recovery of

<sup>965</sup>. Loc. cit.

<sup>966</sup>. See CBN, Annual Report and Statement of accounts, 1995, p. 168.

<sup>967</sup>. Loc. cit.

<sup>968</sup>. Loc. cit.

<sup>969</sup>. See S. 1(3) of the Failed Banks ( Recovery of Debts ) and Financial Malpractices in Banks Decree No. 18 of 1994 as amended by Decree No. 18 of 1995.

<sup>970</sup>. See Decree No. 18 of 1994 as amended by Decree No. 18 of 1995.

Debts) and Financial Malpractices in Banks Tribunal<sup>971</sup> ( Tribunal). Each Tribunal shall be presided by a single judge who shall hear and dispose of all criminal and civil causes or matters before the Tribunal<sup>972</sup>. A Tribunal is vested with exclusive jurisdiction to recover outstanding debts owed to a failed bank<sup>973</sup> and powers to try offences under its constitutive Decree, the CBN Decree and the BOFID<sup>974</sup>.

The awesome powers of the Tribunal which include the interlocutory authority to prohibit the disposition of any movable or immovable property of a debtor or accused person or confiscate such property or freeze bank accounts<sup>975</sup>, and the final powers<sup>976</sup> to order the levying of execution on the properties pledged as collateral and all other properties of a debtor in case of a shortfall are intimidating to all debtors, and erring officers of failed and failing banks. Failure to comply with an order for payment of loan and interest within the time specified by the Tribunal is a punishable offence<sup>977</sup>.

The data collected<sup>978</sup> reveals that between 1995 and May 30, 1997 when the data was collected, the total number of civil cases concerning the recovery of failed banks' debts has risen from 13 in 1995 to 739 cases in May 1997 within a period of less than two years. It further shows the great preponderance of civil over criminal cases since within the same period only 23 criminal cases have been brought before the Tribunal despite the great fraudulent and criminal havoc which had been experienced by the failed and viable

<sup>971</sup>. See S. 1(1) *ibid*.

<sup>972</sup>. See S. 1(3) *ibid*.

<sup>973</sup>. See S. 9 *ibid*.

<sup>974</sup>. See S. 3(1)(b)(c) *ibid*.

<sup>975</sup>. See S. 7 *ibid*.

<sup>976</sup>. See SS. 13(2) & 15(5) *ibid*.

<sup>977</sup>. See S. 19(4) *ibid*.

<sup>978</sup>. Research conducted at the Registry of the Failed Bank ( Recovery of Debts ) And Financial Malpractices In Banks Tribunal, in Lagos during the months of May and June 1997.



banks alike in Nigeria. The small number of criminal cases before the Failed Banks Tribunal may suggest reluctance of the regulatory authorities to invoke criminal sanctions against abusive bank insiders and their colleague. This study has only shown the position regarding Lagos Zone of the Tribunal since other zones of the Tribunal exist in different parts of the country<sup>979</sup>. It however reveals the scope and extent of the bank failure saga in Nigeria and the unabated rise in the civil and criminal cases.

Another important respect in which the Failed Bank Tribunals have not helped the course of banking deregulation in Nigeria is the treatment of bank fraudsters and abusive insiders. The role of the tribunal /court is important because criminals tend to gravitate towards the banking system where white collar crimes are prevalent. The prosecution and just punishment of banking crimes are essential to deter criminals and ensure banking stability by preventing fraud-induced bank failure. The NDIC<sup>980</sup> at a time lamented the non-custodial sentencing of the prosecuted bank criminals, and indicated its determination to appeal against such malevolent criminal justice.

However, the most scandalous judicial treatment of bank criminals is represented by the most recent case of Lord Chief Udensi Ifegwu and others Vs. The Federal Republic of Nigeria<sup>981</sup>, where the Special Appeal Tribunal in Lagos affirmed the convictions of the three bank criminals and abusive insiders, in respect of offences concerning unauthorised credit facilities in the sum of \$2,962,062.89 (Two million, nine hundred and sixty-two thousand Dollars, eighty-nine cents), equivalent to N242,889,156.98 (Two hundred and forty-two million, eight hundred and eighty-nine thousand, one hundred and fifty-six Naira, ninety-eight kobo).

<sup>979</sup>. There are Zones of the Tribunal in Benin, Enugu and Kano.

<sup>980</sup>. See NDIC, Annual Report and Statement of Accounts, 1995, p. 3.

<sup>981</sup>. Appeal No. SAT/FBT/273/96. See also Post Express, Thursday, 12 June 1997.

The judicial odyssey of this case however is that the Special Appeal Tribunal felt the Lower Tribunal was in error in sentencing the accused persons under a stricter law<sup>982</sup>, than the BOFID, a more liberal law under which they were charged. The Appellate Tribunal thus substituted its sentences of a fine of N100,000 (One Hundred thousand Naira), equivalent to \$2,000 (Two thousand Dollars) by each of the accused persons, for the custodial sentences of 3 (Three) years for each of the accused persons by the Lower Tribunal. The substituted sentences by the Special Appeal Tribunal represent, a monstrous and disastrous criminal justice, more alarming than the banking crimes involved in the case.

The appellate judges had the options of imposing a custodial sentence of 3 years or fine of N100,000 (One Hundred Thousand Naira) on each of the accused persons, under the BOFID<sup>983</sup>, which it applied, but curiously chose the fine of a paltry sum of N100,000 each for bank criminals who stole over N200 million. The clear message to the numerous Nigerian bank criminals therefore is that banking fraud is profitable. It is submitted that the appellate judges exercised their discretion unjudicially and offered no reasons whatsoever for the imposition of fine rather than custodial sentences which they could have imposed. They failed to consider and apply the sentencing rules having regards to the amount involved in the crime, the gravity of the crime, the rampancy of the crime, the public interest in discouraging the crime, the peculiar circumstances of the accused persons, and that no amount of fine under the law can adequately punish the crime. These are the considerations that influenced the lower Tribunal's sentences, and the appellate judges could have applied their considered correct law, and still retain the custodial sentences. One wonders the circumstance under which the appellate judges would impose the custodial sentences, if it could not do so in the present case.

<sup>982</sup>. See S. 20 of Failed Banks ( Recovery of Debts ) and Financial Malpractices in Banks Decree No. 18 of 1994 as amended.

<sup>983</sup>. See S. 18 of BOFID No. 25 of 1991 as amended.



Another disgraceful aspect of the case is that the appellate Tribunal remembered to apply the less stricter provisions of BOFID in imposing the obnoxious fines, but judicially forgot to invoke the clear mandatory stipulation in BOFID that "and in addition, any gains or benefits, accruing to any person convicted under this section by reason of such contravention, shall be forfeited to the Federal Government, and the gains or benefit shall vest accordingly in that Government"<sup>984</sup>. No such orders of forfeitures were made against the accused persons. It is very painful that the Appellate Tribunal committed this act of judicial travesty in the full knowledge that its decision is final<sup>985</sup>.

In our interview with the Chairman of the Lower Tribunal who decided this case, he was reticent as judges are on the issue but contends that "I do feel for myself. The Honourable members of the Special Appeal Tribunal would feel that the sentence under BOFID is inadequate for the gravity of the offence. Many of the accused persons who are millionaires, if they know that N100,000 would be the punishment, they would not be afraid. The law may be amended and the punishment made stiffer....."<sup>986</sup>. We salute the learned Chairman's courage in imposing custodial sentences on the influential accused persons, and appreciate his judicial candour in commenting on the appeal on his decision. However, unlike the Chairman, we blame the appellate Tribunal, and not the law for this judicial aberration. The law gave them some discretion, they misapplied themselves to the law and facts, and set a calamitous precedent.

This type of perverted judicial reasoning<sup>987</sup> has undermined the purpose of the Failed Bank Tribunal Decree, and the essential need of deterring banking fraud in the

<sup>984</sup>. See S. 18 (2). Ibid.

<sup>985</sup>. See S. 5(2) of Failed Banks ( Recovery of Debts ) And Financial Malpractices In Bank Decree No. 18 of 1994 as amended.

<sup>986</sup>. Private interview with Justice M. Ope-Agbe, Chairman, Failed Bank Tribunal, Zone II, Lagos on 13/6/97.

<sup>987</sup>. See Guardian On Sunday, 24 March 1996, p. B3. A similar catastrophic judgement was handed down in the case of banking fraud involving Alhaji S. Bello Abubakar, the managing director of Gamji Bank. Despite the fact that he was found guilty of misappropriating the sum of N57.5 million naira,

country. A very serious objection to the Special Appeal Tribunal which hears appeals from the Failed Bank Tribunal is its composition which leaves much to desire. The Special Appeal Tribunal is made up of two persons which in the case under review consisted of one retired judge and one practising lawyer. This structure removes the Special Appeal Tribunal judges from any possible disciplinary measures or reprisal for perverted decisions and makes them susceptible to greater influence than serving judges. The same objection applies to Failed Bank Tribunal presided by retired judges. It is submitted that Special Appeal Tribunal and Failed Bank Tribunal should be presided by serving judges who are still accountable for their decisions and subject to strict code of judicial conduct.

The resolution of the banking distress has become elusive to the regulatory authorities. The distressed banks, despite their infectious financial ailments, have continued to co-exist with healthy and viable banks, leading to fears of market pollution. The sanctions and remedial actions<sup>988</sup> by the CBN and NDIC had failed to rescue most of the distressed banks from their financial abyss. The recent threat<sup>989</sup> of liquidation by the CBN of the distressed banks that are not recapitalised before the 31st March, 1997, has been revealed as empty protests of a frustrated powerless regulator in the face of the intransigence of the Head of State<sup>990</sup>.

the Tribunal chairman, Justice Roseline Ikeje, refused to sentence him on the ground that the accused had made solid arrangement to get the money back to the bank coffers, and it was not necessary to send him to jail.

<sup>988</sup>. See NDIC, Annual Report and Statement of accounts, 1992, p. 44. See also NDIC, Annual Report and Statement of accounts, 1995, p. 47. The sanctions include suspension from banking activities in clearing houses and foreign exchange market, holding actions, cease and desist orders, appointment of IMBs, and handsome financial hand-outs and bail -outs.

<sup>989</sup>. See CBN, Monetary, Credit, Foreign Trade And Exchange Policy Guidelines For 1997 Fiscal Year. Monetary Policy Circular No. 31, p. 13.

<sup>990</sup>. See The Punch, Business News, Friday, 16 May 1997, p. 11.



At last, the Head of State in January 1998, authorised by an Order<sup>991</sup>, the liquidation of the 26 distressed banks, and the CBN announced<sup>992</sup> the revocation of their licences on the 19th of January, 1998. It is hoped that this gratitude by the Head of State signalled a new political will to sanitise the ailing banking system. The financial position of the liquidated banks is illustrated in Appendix XII herein.

## **9.5 Conclusions**

Deregulation " has exposed the banking industry to the jolts and shocks of the unstable economy "<sup>993</sup> that Nigeria possesses. The banks have experienced acute liquidity crises, financial fragility, financial crashes, and outright bankruptcies. Indeed, the banking system is now in deep distress. The causes are diverse and varied. However, politicisation of the banking regulation and supervision as well as adverse human factors loomed large as the significant causes of bank failure in Nigeria. The remedial measures to stem the tide of bank failure have been inadequate and ineffective due to their political coloration and intransigence of the political authority. It seems the judicial measures appear effective, but they have also been rendered suspect by a recent dubious decision and the possibility of political influence.

A critical insight into the specific factors that undermined successful deregulation of the Nigerian banking system shall form the basis of our enquiry in the next chapter.

<sup>991</sup>. See Banks And Other Financial Institutions Decree 1991, Revocation of Banking Licences Order. Federal Government Gazette No.4, Vol. 85 of 16 January 1998.

<sup>992</sup>. See Newswatch. 2 February 1998, p. 24; The News. 2 February 1998, p. 29; and, Tell. 2 February 1998, p. 27.

<sup>993</sup>. See Umunnachila. Allwell.. op. cit., p. 30.

## **PART V: ASSESSMENT AND EVALUATION**



## **CHAPTER X**

### **DEREGULATION OF THE NIGERIAN BANKING SYSTEM: A CRITICAL PERSPECTIVE**

#### **10.1 Introduction**

The analysis of the consequences of deregulation of the Nigerian banking system has revealed its mixed results and the cataclysmic failure of a substantial number of the banking institutions. Indeed, the banking system is in deep and deepening distress. A potent summation of financial deregulation of the country's banking system is that the high goals of banking deregulation have become unattainable with devastating effects on the financial system and the Nigerian economy . An issue that comes to fore is the distillation of the factors that militated against a successful deregulation of the Nigerian banking system. The critical inquiry into the fundamental factors that undermined the deregulation programme is the pivotal focus of this chapter.

Our approach evaluates the mechanism and methodology of financial deregulation of the Nigerian banking system considering the prognosis of the Mckinnon-Shaw concept and theory of financial deregulation, and the experiences of other countries that have undertaken comprehensive deregulation of their financial systems .

This chapter contains seven sections. The introduction is the first section. The second section identifies the Nigerian political realities and peculiarities, as the greatest undermining factors to the country's financial reform programme. The powerlessness of the financial regulatory agencies is analysed in the third section, whilst, the fourth section chronicles the voluminous inconsistent regulatory and policy measures that precipitated the banking collapse and financial crisis. The fifth section critically highlights the role of defective law in promoting macroeconomic instability and fiscal imbalance in the derailment of the Nigerian financial deregulation. The sixth section underscores the

implications of the Nigerian financial deregulation experience for the Bretton wood institutions - IMF and World Bank. The seventh section contains the conclusions.

## **10.2 Nigerian political dialectics and financial deregulation: A configuration of incompatibles**

The Nigerian financial deregulation programme like most reforms has been chiefly executed through regulatory and legal imperatives contained in banking laws and policies, which in the main reflect the political preferences of the ruling class and the personal inclinations of the vested interests<sup>994</sup>. This is not surprising as ideological biases and personalities of political leaders as well as economic factors usually influence reforms and their regulatory underpinnings<sup>995</sup>. Indeed, Richard Posner<sup>996</sup> has postulated that legislative process is usually buffeted by interest-group pressures denying statutes of sound policy judgement. The content, character and nature of legal imperatives are greatly influenced by "political, self-interested, traditional , habitual or other truth - independent considerations"<sup>997</sup> and the "ultimate premises of legal doctrines are political"<sup>998</sup>.

The interest - group theory has emphasised that lawmaking process is usually dominated by redistributive desires of narrow coalitions which negatives any public interest euphemism as the basis of legislation<sup>999</sup>. In fact, regulation has been characterised as an indirect instrument for wealth redistribution<sup>1000</sup> and government interventions cannot

<sup>994</sup>. See Canova, *idem.* p. 1341.

<sup>995</sup>. See Jose Edgardo Campos and Hadi Salehi Esfahani. " Why and When Do Governments Initiate Public Enterprise Reform? ". ( 1996 ) The World Bank Economic Review, Vol.10, No. 3, p. 477.

<sup>996</sup>. See Posner, A. Richard., *Overcoming Law*. Harvard University Press, Cambridge, Massachusetts,(1995) p. 393.

<sup>997</sup>. *Ibid.*, p. 37.

<sup>998</sup>. *Ibid.*, p. 83.

<sup>999</sup>. *Ibid.*, p. 400.

<sup>1000</sup>. See Campos and Esfahani, *op. cit.*, p. 455.



"be divorced from issues of redistribution, because it is partly through redistribution that a regime sustains itself"<sup>1001</sup>. More emphatically, Benston<sup>1002</sup> contends that financial regulation "is imposed to redistribute wealth to those with political powers"<sup>1003</sup>. Thus, in political settings marked by interest group hegemony, the official government policies all too often venerate the private interests of the politically powerful individuals and groups<sup>1004</sup>.

It is the recognition of this political reality of laws and regulations that Posner posits that it is naive in the present world to think of laws and regulations "as typically, let alone invariably, the product of well meaning efforts to promote the public interest by legislators who are devoted to that interest ..."<sup>1005</sup>. The public interest conception of law is thus revealed as a political farce and legal anti farce. This is particularly so in authoritarian regimes that are often subordinate to vested interests that sustain their political offices<sup>1006</sup>, and since politicians, military or civilian constantly aspire to consolidate their powers, the predominance of vested interests in laws and regulation may be accepted as axiomatic in dictatorships without democratic or plausible controls. It is against the background of the above intellectual paradigm that the Nigerian political dialectics during financial deregulation will be analysed.

<sup>1001</sup>. Ibid., p. 454.

<sup>1002</sup>. See Benston, George. J., " Does Bank Regulation Produce Stability ? Lessons from the United States " in Forrest Capie and Geoffrey E. Wood ( eds. ), Unregulated Banking, Chaos or Order ?, Macmillan, England, (1991) p. 207.

<sup>1003</sup>. Ibid., p. 229.

<sup>1004</sup>. See Canova, Timothy. A., " The Transformation Of U.S. Banking And Finance : From Regulated Competition To Free-Market Receivership " (1995) 60 Brooklyn Law Review No. 4, 1295 at 1341.

<sup>1005</sup>. See Posner, op. cit., p. 400.

<sup>1006</sup>. See Ames, Barry., Political Survival : Politics and Public Policy in Latin America. Berkeley : University of California Press,(1987).

The basic fact that Nigerian financial reform is over-politicised is best reflected in the banking and related laws and policies enacted during the deregulation programme. A remarkable feature of the legal dictates is that the Nigerian military President or Head of State is made the final authority on monetary and banking policies in the country<sup>1007</sup>. All the regulatory bodies with financial supervisory or related responsibilities are under the direct control of the President or Head of State.

The financial regulator, CBN, requires presidential approval for virtually all monetary and banking policies including routine supervisory operations over banks<sup>1008</sup>. Section 8 (3) of CBN Decree<sup>1009</sup> provides " The Head of State after due consideration may, in writing, direct the Bank through the Minister as to the monetary and banking policy pursued and the directive shall be binding on the Board which shall forthwith take all steps necessary or expedient to give effect thereto". Section 9 (1) of BOFID states that " The President on the recommendation of the Bank shall, from time to time, determine, as he may deem appropriate, the minimum paid-up share capital of each category of banks".

Additionally, Section 12 of BOFID stipulates in respect of revocation of banking licences that "The Governor, may with the approval of the President by notice published in the Gazette, revoke any licence granted under this Decree...", and of course under section 37(3) of BOFID any order by the CBN against a failed bank or its director, manager or officer "may either be confirmed, modified, altered, varied or replaced by the President".

The ministerial direct oversight by Finance Minister over banking regulation and supervision by the CBN has most recently been legislated<sup>1010</sup>. Section 1(1) of BOFID as amended<sup>1011</sup> provides " The Central Bank of Nigeria.....shall have all the functions

<sup>1007</sup>. See S. 8 of CBN Decree No. 24 of 1991 as amended.

<sup>1008</sup>. See SS. 9, 12, 33, 34 & 36 of BOFID No. 25 of 1991 as amended.

<sup>1009</sup>. CBN Decree No. 24 of 1991 as amended by Decree No. 3 of 1997.

<sup>1010</sup>. See S. 1 (1) of BOFID No. 25 of 1991 as substituted by BOFID (Amendment) Decree No. 4 of 1997.

<sup>1011</sup>. Decree 25 of 1991 as amended by Decree No. 4 of 1997.



and powers conferred and the duties imposed on it under this Decree subject to the overall supervision of the Minister".

Similarly, the Bureau of Public Enterprises, the agency in charge of the privatisation of public enterprises including public banks, is an arm of the Presidency<sup>1012</sup> and requires Presidential approval for all its core privatisation or commercialisation activities<sup>1013</sup>. Section 3(5) of Bureau of Public Enterprises Decree<sup>1014</sup> states that "The Bureau shall report to the Federal Government through The Presidency", and under section 4(2) of the same Decree the President "may, at any time, remove a member of the Board from office.....".

Additionally, the created Failed Bank Tribunal and its appellate body, both charged with the judicial functions of adjudicating civil and criminal matters concerning failed banks, are also under the office of the Presidency<sup>1015</sup>. Section 1(1) of Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree<sup>1016</sup> provides that "The Head of State,.....shall constitute for the purposes of this Decree such number of Tribunals as he may deem necessary to be known as the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Tribunals.....".

The NDIC , the bank insurance agency with some supervisory duties, is subject to ministerial approval in respect of its functions and equally under the supervisory hegemony of the Finance Minister<sup>1017</sup>. In this respect, section 7 of the NDIC Decree<sup>1018</sup> provides

<sup>1012</sup>. See S. 1 (3) of Bureau Of Public Enterprises Decree No. 78 of 1993.

<sup>1013</sup>. See Ibid., S. 3. 3(2). 3(4). 3 (5), 17 (3). & 24 .

<sup>1014</sup>. Decree No. 78 of 1993.

<sup>1015</sup>. The Tribunal is directly under the office of the Presidency. This fact is however not stated in its constitutive law save that the Tribunal is constituted by the Head of State. see S. 1(1) of Failed Banks (Recovery Of Debts) And Financial Malpractices In Banks Decree No. 18 of 1994 as amended.

<sup>1016</sup>. See Decree No.18 of 1994 as amended by Decree No. 18 of 1995.

<sup>1017</sup>. See SS 4 & 24 of NDIC Decree No. 22 of 1988 as amended.

that "The Minister may give to the Board directives of a general or special nature with regard to the functions of the Corporation and it shall be the duty of the Chairman, the Board and the Managing Director to comply with the directives". The NDIC is also require by section 23C (2)(a) of NDIC Decree<sup>1019</sup> to "apply to the Head of State.....for consent for the liquidation of the insured institution;..."

These facts underscore the reality that the President is the political and regulatory bulwark of financial deregulation or reforms in Nigeria. The second most influential regulatory and supervisory authority over banking deregulation is the Finance Minister, who reports directly to the President. These enormous powers over monetary and banking matters are accorded the President in personam, and the Finance Minister. Additionally, the Nigerian military President or Head of State represents no person and is accountable to no one. Hence, the monetary, banking and financial misadventures by this political Leviathan are beyond reproach and above scrutiny .

It seems the concentration of financial regulatory powers by the military President or Head of State in himself as the lawmaker is motivated by pure political and personal interests. These powers establish the President as the chief distributor of political largesse and patronage and enables him to dispense benefits and punishment at will to political foes and stooges alike. The President is able to keep himself in power through the exercise of the financial regulatory powers. The direct control and oversight of the regulatory agencies ensure that their regulations and regulatory activities serve the interest of the reigning political rentier class on diverse issues as bank ownership and share holding, appropriate interest and exchange rates, lending opportunities, safety nets for politically favoured borrowers, and general protection of the financial interest of the political class.

<sup>1018</sup>. See Decree No. 22 of 1988.

<sup>1019</sup>. See DecreeNo. 22 of 1988 as amended by Decree No. 5 of 1997.



The dominant position of the President, and to a lesser extent the Finance Minister, in financial deregulation, in contrast to the impotence of the technical experts at regulatory agencies, lends credence to the assertion that dictatorial, personalistic and patrimonial objectives underline banking regulation and deregulation in Nigeria. This assertion is further buttressed by the 1997 amendments<sup>1020</sup> to the Nigerian banking laws. The sole beneficiary of the regulatory changes is the Finance Minister whose political and legal powers are enhanced at the expense of the technical experts at the regulatory agencies.

A closer examination of the Nigerian society since financial deregulation reveals that the military President's almighty financial regulatory powers have benefited the military ruling class, the most. A Nigerian Magazine, *Tempo*<sup>1021</sup>, in an edition captioned 'The Billionaire Soldiers : How The Military Hijacked Nigeria', chronicles the phenomenal financial successes that had been experienced by serving and retired military officers since financial deregulation.

According to Lewis and Stein<sup>1022</sup>, the financial services in Nigeria attracted the military elites with the conspicuous " presence of retired officers on managing boards, and the more covert interests of government leaders and other active-duty officers in the new institutions, constituted the strongest business concentration among high military echelons"<sup>1023</sup>. A list detailing the pattern of military control of the Nigerian financial system by indicating the ownership and controlling interest of multitude of high ranking military personnel is contained in Appendix XI. The list underscores the capture of the Nigerian banking and financial industry by the military class as the "golden industry".

<sup>1020</sup>. See Decree Nos. 3, 4, & 5 of 1997.

<sup>1021</sup>. 14 November 1996, Vol. 7, No. 18.

<sup>1022</sup>. See Peter Lewis and Howard Stein, *op. cit.*, p. 7.

<sup>1023</sup>. *Loc. cit.*



In this connection, Nigerian financial deregulation actually emphasises the notion that political power is all about gaining access to rents<sup>1024</sup>. The government changed the mechanisms for rent seeking during deregulation by legalising the process of rent allocation through the allocation of foreign exchange and banking appointments, thus preserving the patronage system "in a more legal and therefore more lucrative form"<sup>1025</sup>. The financial deregulation era produced its own illegitimate sources of wealth<sup>1026</sup> with the auctioning of banking charters to the military and civilian members of the ruling class. The possession of a banking licence affords legal route to subsidised foreign exchange which can be recycled with enormous arbitrage gains for personal enrichment and political funding. Indeed, Nigerian financial liberalisation " was quickly captured by a clientelist state as a means of reallocating rents to strategic constituents "<sup>1027</sup>.

Perhaps the most damning political problem affecting deregulation is the continuation of military rule which is regarded by most Nigerians as serious misfortune<sup>1028</sup>. The lack of credibility and reckless mismanagement and corruption of the military rulers greatly undermined the financial deregulation programme. Both General Babaginda and his successor, General Abacha, retained dual exchange rates of Naira to favour political friends<sup>1029</sup>, and further committed other acts of fiscal and financial impropriety with impunity<sup>1030</sup>. It may be mentioned that whilst past civilian political

<sup>1024</sup>. See Bevan et al, op. cit., p. 65.

<sup>1025</sup>. Ibid., p. 68.

<sup>1026</sup>. See Okigbo, *Essays in the Public Philosophy of Development*, Vol.3. op. cit., p. 250.

<sup>1027</sup>. See Peter Lewis and Howard Stein, op. cit., p. 5.

<sup>1028</sup>. See Micheal Holman, *Financial Times*, 16 March 1992, p. 1.

<sup>1029</sup>. See Newswatch, *Nigerian News Magazine*, 23 January 1995, p. 6.

<sup>1030</sup>. General Babaginda established the infamous ' Dedicated Accounts ' through which oil revenues were diverted to dubious extra budgetary programmes and projects. The present military ruler, General Abacha promised fiscal prudence, but simultaneously created " two ministries to make his wife happy ". see Akinrinade, S., *Newswatch*, 23 January 1995, p. 6. On the mismanagement of oil revenue windfall in



leaders had been summoned before judicial inquiries<sup>1031</sup> for alleged banking mismanagement and abuses, no military leader in the country has been investigated despite their alleged abusive acts in some banks.

The greatest malady of military governance is its inherent political instability which orchestrates policy and regulatory instabilities damaging to the Nigerian financial market. The existence of a stable and viable political environment has been prescribed as crucial to economic management and stability<sup>1032</sup>. Thus, politics cannot be divorced from economics<sup>1033</sup>. The Director of CBN Research submits correctly that the "design of economic policy must take into account appropriate socio-political dimensions for its effectiveness"<sup>1034</sup>.

The features of the military regimes marked by intermittent and sudden change of government as well as rapid shuffling of government structures and functionaries are antithetical to regulatory predictability, policy credibility and stability of financial deregulation. It has been observed that changes in government with new officials have frequently precipitated the review of economic policies and abandonment of erstwhile rational policy and regulatory stance<sup>1035</sup>. The leading authority on Nigerian Constitutional law, Professor Nwabueze, affirms that it is "true that the period of military rule has witnessed even worse instability"<sup>1036</sup>

Nigeria, see Financial Times, 16 March 1992. see also " Pandora Box ".in Newswatch . Nigerian News Magazine, 16 January 1995.

<sup>1031</sup>. See the Foster-Sutton Tribunal Report (London, HmsO, Cmnd. 51, 1957). see also Coker Commission of Inquiry Report (Lagos, Federal Ministry of information, 1962).

<sup>1032</sup>. See Ojo, M.O., (Director of CBN Research) " The Challenges For Economic Management In Nigeria ", (1995) CBN Economic & Financial Review, Vol. 33, No. 2, p. 104.

<sup>1033</sup>. Loc. cit.

<sup>1034</sup>. Loc. cit.

<sup>1035</sup>. Ibid., pp. 104 - 105.

<sup>1036</sup>. See Nwabueze, B. O., Military Rule And Constitutionalism in Nigeria, Spectrum Law Publishing, Ibadan, (1992), p. 288.

Several other nugatory vices and features of the military government in Nigeria include the centralisation of economic and financial decision making powers, abridgement of regulatory agencies' powers and authorities, personalisation of regulatory mechanisms<sup>1037</sup>, restriction of most economic and political rights, hegemony of financial regulatory mediocrity, restriction or absence of judicial review, and complete absence of checks and balances against abusive political powers. These characteristics of the Nigerian military governance appears to indicate that the country's political structure conspires against the viability of a deregulated financial system<sup>1038</sup>.

In fact, the Director of CBN Research, Dr Ojo concludes rightly in our view that in "final analysis, the point to emphasise is that the political foundation for sound economic management in Nigeria is yet to be laid "<sup>1039</sup>. He recommends the restoration of democratic government and viable political structure for the success of Nigeria's economic and financial reforms<sup>1040</sup>. An Oxford professor of economics, Paul Collier, lend credence to the political undercurrents of Nigerian economic reforms, and observes that economic "progress in Nigeria .....have to await political revolution"<sup>1041</sup>

This call for democratic system of government has been echoed<sup>1042</sup> throughout the country as a crucial underpinning to a credible and viable financial and economic reforms. The demand has come to the fore with the recent neutralisation of the promised political

<sup>1037</sup>. Ibid., pp. 7-10.

<sup>1038</sup>. See Diaz-Alejandro, C., " Good-bye Financial Repression. Hello Financial Crash ", in Andres Velasco (ed.), op. cit., p. 379.

<sup>1039</sup>. See Ojo (1995) op. cit., p. 105.

<sup>1040</sup>. Ibid., p. 107.

<sup>1041</sup>. See Paul Collier, " Living Down The Past : Redesigning Nigerian Institutions For Economic Growth " (1996) African Affairs, Vol. 95, No. 380, 325 at p. 327.

<sup>1042</sup>. See Punch, Nigerian Newspaper, 16 May 1997, p. 11. See also Newswatch, Nigerian News Magazine, 23 January 1995, p. 30.



reforms by the military<sup>1043</sup>, precipitating serious civil and political anarchy which cause "the greatest damage to the economic reform process especially the elements of deregulation"<sup>1044</sup>. Candidly, the Nigerian experience has eloquently demonstrated the dangers of financial deregulation in a politically charged and institutionally unstable setting<sup>1045</sup>.

### **10.3 Regulatory Agencies' Powerlessness: The Legal and Political Subversion of the CBN and NDIC**

The apt inquiry to make in assessing financial deregulation in Nigeria as in much of Africa has been rightly formulated by Annibale<sup>1046</sup> as the verification of whether the regulatory institutions involved in such deregulatory venture are effectively empowered, competent and independent, and are supported by a dynamic legal and regulatory framework which can provide the degree of supervision and intervention necessary to facilitate and sustain the development of a resilient and open market economy. The evidence in respect of Nigeria presents an irrefutable negative conclusion to the issues raised in the formulation.

With respect to monetary and banking policy, after a period of five years of regulatory ambivalence over financial deregulation, the government enacted the CBN Decree of 1991 under which the Governor of CBN is required to keep the President informed of the Bank's monetary and banking policy<sup>1047</sup> subject to the qualification that

<sup>1043</sup>. General Babaginda annulled the result of the Nigerian Presidential elections of 12 June 1993. In November 1993, General Abacha took over power and dismantled all the civilian political structures that had been erected at the State and local Government levels.

<sup>1044</sup>. See Ojo (1994), *op. cit.*, p. 30.

<sup>1045</sup>. See Peter Lewis and Howard Stein, *op. cit.*, p. 17.

<sup>1046</sup>. See Annibale, Robert. A., " The need for a regulatory framework in the development and liberalization of financial markets in Africa " in Faundez, J. (ed.), *Good Government and Law: Legal and Institutional Reform in Developing Countries*, Basingstoke:Macmillan (1996).

<sup>1047</sup>. See Section 8 (1) of the CBN Decree 1991.

the President "after due consideration may, in writing, direct the bank as to the monetary and banking policy pursued or intended to be pursued"<sup>1048</sup>. The Presidential directive is binding and must be implemented forthwith<sup>1049</sup>. This provision was applauded as an improvement<sup>1050</sup> on the pre-1991 law under which the CBN monetary and banking policy proposals were passed to the Federal Executive Council through the Federal Ministry of Finance for integration into the Federal Government Budget<sup>1051</sup>.

Notwithstanding the 1991 regulatory change, the final authority concerning the Nigerian monetary and banking policy is the President or Head of State and not the CBN. This regulatory structure is inherently flawed because it permitted the untoward situation in which the President or Minister of Finance "often imposed their own policies. The CBN Governor hears the changes over the news on radio"<sup>1052</sup>. A high ranking CBN official condemns the vesting of final authority on monetary and banking policy in the President or Head of State asserting "it would have been okay if the President is well educated, but here the President is a dummy. I do not feel comfortable with the arrangement"<sup>1053</sup>. This unsatisfactory regulatory structure that however allowed direct access of the CBN Governor to the President has most recently been reversed to the pre-1991 regulatory structure.

<sup>1048</sup>. See Section 8 (2) of the CBN Decree 1991.

<sup>1049</sup>. Loc. cit.

<sup>1050</sup>. See Kembi. ' Kayode., Review Of Developments In The Legislation , Regulation And Supervision Of Banks In Nigeria (unpublished paper of the office of the Board Secretary and Legal Adviser, Nigeria Deposit Insurance Corporation, Lagos, 1991) p. 18. see also Osunbor, O., " Legislative And Institutional Developments In The Banking Industry " in A Decade of Innovative Bankers Training (Financial Institution Training Centre, Lagos, Nigeria, 1992) p. 80.

<sup>1051</sup>. See Odozi (1995). op. cit., p. 3.

<sup>1052</sup>. Private interview with Chief Z. CBN official, in Lagos on 22/5/97.

<sup>1053</sup>. Loc. cit.



The 1997 Central Bank of Nigeria (Amendment) Decree<sup>1054</sup> now requires the Head of State to be kept informed of CBN monetary and banking policy through the Minister of Finance<sup>1055</sup>. Section 8(1) of CBN Decree as amended<sup>1056</sup> provides that "The Governor shall keep the Head of State informed, through the Minister, of policy pursued or intended to be pursued by the Bank". The essence of this 1997 Decree is the subordination of the CBN to the Ministry of Finance, and deprivation of the Bank of any semblance of freedom that the 1991 CBN Decree had accorded it. The President of the Chartered Institute of Nigerian Bankers, Dr Adewunmi aptly captures the impotence of the CBN thus :

CBN is not independent anymore. Not that it has great latitude before. But it is worst now than it had ever been because there is absolutely nothing it can do without reference to the Minister of Finance, if things get as bad to such an extent that the Finance Minister can suspend the Deputy-Governor of CBN without reference to CBN Governor. Hence, CBN is a department of Finance Ministry. It is a big pity<sup>1057</sup>.

A deleterious effect of the untoward legal and regulatory framework in Nigeria is that most monetary and banking policies do not emanate from the CBN. In fact, an officer of the CBN asserts that "(W)e do not agree with these mandated requirements and policies. These are due to politicisation of everything in Nigeria"<sup>1058</sup>. This assertion is corroborated by the President of the Chartered Institute of Bankers of Nigeria :

My view is that the CBN is not responsible for anything and consequently is not accountable for anything . You cannot ask the CBN why general level of interest rate is high?, why inflation is high?, why money supply is out of control?, or why there is

<sup>1054</sup>. Decree No. 3 of 1997.

<sup>1055</sup>. See Section 8 of the CBN Decree No. 24 of 1991 as amended by CBN (Amendment) Decree No. 3 of 1997.

<sup>1056</sup>. See Decree No. 24 of 1991 as amended by Decree No. 3 of 1997.

<sup>1057</sup>. Private interview in Lagos on 17/6/97.

<sup>1058</sup>. Private interview with Chief Z. CBN official. in Lagos on 22/5/97.

little or no growth in the economy . The CBN cannot take any monetary decision and has been extended to administrative control and control of the personnel. It is a unique situation and thoroughly bad<sup>1059</sup>.

The limitations on CBN administrative and personnel control are illustrated by the fact that the Governor and Deputy Governors of CBN are all political appointees of the President solely<sup>1060</sup> with the terms and conditions of their appointment stated in their respective letters of appointment<sup>1061</sup> and not in legislation. Section 9(1) of CBN Decree<sup>1062</sup> provides that the Governor and Deputy Governors of CBN ".....shall be appointed by the Head of State by instrument under the public seal and on such terms and conditions as may be set out in their respective letters of appointment".

These key CBN officers therefore remain in their respective offices only at the pleasure of the President or Head of State since there is nothing that prevents the President from removing them at will. There is no security of tenure or any safeguard against political and abusive actions of the President or Head of State. This centralisation of powers of appointment and removal put the highest CBN officers directly under the political control and pressure of the Presidency.

Indeed, the readiness of the military government to discipline any critical banker had been demonstrated much earlier by the sacking of Chief Olashore<sup>1063</sup>, managing director of the First Bank of Nigeria Plc, and Dr Ayagi , managing director of the

<sup>1059</sup>. Private interview with Dr Adewunmi in Lagos on 17/6/97.

<sup>1060</sup>. See Section 9 (1) of CBN Decree No. 24 of 1991 as amended by CBN (Amendment) Decree No. 3 of 1997.

<sup>1061</sup>. Loc. cit.

<sup>1062</sup>. See Decree No. 24 of 1991 as amended by Decree no. 3 of 1997.

<sup>1063</sup>. Dr Okigbo describes the sacking of this eminent banker as " most undeserved " and " a disservice to the community to try to silence him or to reduce him to the status of your humble and obedient servant ". see Okigbo, Essays in Public Philosophy of Development, Vol. 3, op. cit.



Continental Merchant Bank, both for making comments on the policies of financial deregulation which the government regarded as offensive.

The appointing and disciplinary powers over the CBN officers could have been more cosmetic by vesting such powers over CBN officers in the military government's legislative or executive body<sup>1064</sup>. It seems however that in arrogant display of naked dictatorial power, the Nigerian military President or Head of State made himself the custodian of enormous powers over the CBN officers.

The negative impact of this political centralisation of powers over CBN officers is best exemplified by the most recent political reprisals suffered by the CBN Governor and his deputies because of discrepancies between the Budget statistics published by the CBN and those of the Ministry of Finance<sup>1065</sup>. The Head of State regarded the actions as uncooperative and antagonistic, hence statutorily relegated the CBN officers by enacting the 1997 Central Bank of Nigeria (Amendment) Decree<sup>1066</sup> and 1997 Banks and Other Financial Institutions (Amendment) Decree<sup>1067</sup>.

Pursuant to some critical provisions of these Decrees enacted in 1997, the Governor of CBN has been divested of his power as the main formulator and executor of Nigerian monetary and banking policies<sup>1068</sup>, and became deprived of his ex-officio position

<sup>1064</sup>. In the case of Nigeria, the highest decision making body is called Provisional Ruling Council, and the executive body is known as the Federal Executive Council. Indeed, the Provisional Ruling Council is the approving authority for the exchange rate of Naira. See Section 16 of CBN Decree 24 of 1991 as amended by CBN (Amendment) Decree No. 3 of 1997.

<sup>1065</sup>. It seems the discrepancies between the Budget statistics of the CBN and the Ministry of Finance, were regarded as antagonistic of the ruling government by the CBN officers. see The Punch, Nigerian Newspaper, 16 May 1997, p. 11.

<sup>1066</sup>. See Decree No. 3 of 1997.

<sup>1067</sup>. See Decree No. 4 of 1997.

<sup>1068</sup>. See Section 6 (4) of CBN Decree No. 24 of 1991 as substituted by CBN (Amendment) Decree No. 3 of 1997. This new provision indirectly repealed paragraph 7 (a) of the Schedule to the CBN Decree No. 24 of 1991.

of the chairmanship of both the CBN<sup>1069</sup> and NDIC<sup>1070</sup> Boards. The Governor and the CBN became subordinated to the Minister of Finance whose supervisory and hegemonic powers over CBN received legal sanction<sup>1071</sup>. The powerful presence of CBN officers in the CBN Board was downsized and two Deputy Governors of CBN lost their membership of the CBN Board<sup>1072</sup> and powers over policy formulation. The CBN also significantly lost its power as the sole authority for the determination of the exchange rate of the Naira<sup>1073</sup>.

The much more vexed issues concern the alarming regulatory impotence of the CBN regarding its core banking regulation and supervisory duties. The CBN either lacks necessary powers or such available powers are grossly inadequate and politicised. Indeed, it is remarkable that under the 1997 regulatory dispensation, the CBN can neither grant banking licences nor vary or revoke any conditions attached to licences except with the approval<sup>1074</sup> of the Finance Minister who is the overall supervisor<sup>1075</sup> of the CBN in respect of banking regulation and supervision.

Concerning the grant of banking licences, section 3(5) of BOFID<sup>1076</sup> provides that "An application for a licence shall be forwarded to the Governor and all licenses to be issued shall be with the prior approval of the Minister". Section 5(1) of the same law

<sup>1069</sup>. See Section 6 (3) of CBN Decree No. 24 of 1991 as substituted by CBN (Amendment) Decree No. 3 of 1997.

<sup>1070</sup>. See Section 2 (3) of NDIC Decree No. 22 of 1988 as inserted by NDIC (Amendment) Decree No. 5 of 1997.

<sup>1071</sup>. See Section 1 (1) of BOFID No. 25 of 1991 as substituted by BOFID (Amendment) Decree No. 4 of 1997.

<sup>1072</sup>. See Section 6 of CBN Decree No. 24 of 1991 as substituted by CBN (Amendment) Decree No. 3 of 1997.

<sup>1073</sup>. See Section 16 of CBN Decree No. 24 of 1991 as substituted by CBN (Amendment) Decree No. 3 of 1997.

<sup>1074</sup>. See S. 5 of BOFID No. 25 of 1991 as substituted by BOFID (Amendment) Decree No. 4 of 1997.

<sup>1075</sup>. See S. 1 (1) of BOFID No. 25 of 1991 as substituted by BOFID (Amendment) Decree No. 4 of 1997.

<sup>1076</sup>. Decree No. 25 of 1991 as amended by Decree No. 4 of 1997.



further provides that ".....the Governor may, with the approval of the Minister, vary or revoke any condition subject to which a licence was granted or may impose fresh or additional conditions to the grant of a licence".

Supplementary to the above, the CBN's other regulatory powers have been virtually eclipsed by Presidential or ministerial approvals that are pre-conditions to the exercise of such powers by the CBN. Thus, the CBN cannot exercise any disciplinary measures over a bank without presidential approval. Indeed, the president must approve the revocation of a banking licence<sup>1077</sup>, the assumption of control or sale of a bank<sup>1078</sup>, and the removal of managers and officers of failing banks<sup>1079</sup>. The President exercises appellate authority<sup>1080</sup> over some disciplinary measures of the CBN and possesses the extensive power to overrule<sup>1081</sup> CBN disciplinary orders. Of course, the President<sup>1082</sup>, not the CBN, determines the minimum paid up capital of banking institutions. Section 9 (1) of BOFID states that " The President on the recommendation of the Bank shall, from time to time, determine, as he may deem appropriate, the minimum paid-up share capital of each category of banks".

Presidential powers over banking regulation and supervision are so encompassing that it is apt to describe the Nigerian President or Head of State as the sole authority in financial regulation of the banking industry. The NDIC , the banking deposit insurance agency, is even in a worse predicament since its powers of take-over, assumption, control,

<sup>1077</sup>. See S. 12 of BOFID 1991 as amended.

<sup>1078</sup>. See S. 34 (1) of BOFID 1991 as amended.

<sup>1079</sup>. See S. 33 (2) (c) of BOFID 1991 as amended.

<sup>1080</sup>. See S. 14 & S. 37 (3) of BOFID 1991 as amended.

<sup>1081</sup>. See S. 37 (3) of BOFID 1991 as amended.

<sup>1082</sup>. See S. 9 of BOFID 1991 as amended.

examination, special examination, and closure of an insured bank are subject to the approval of the Minister for Finance<sup>1083</sup>.

The overt politicisation of the banking regulatory powers effectively emasculated the CBN and NDIC. An official of the CBN has asserted that the "CBN is a toothless bulldog. The Bank of England closed the offices of BCCI and Banco Ambrosiano. The CBN lacks such powers. The CBN should have power of closure"<sup>1084</sup>. It is equally significant that the presidential intervention in banking regulation compromised the regulatory agencies since "neither the Central bank nor the NDIC were able to perform effective supervision and enforcement"<sup>1085</sup>. Additionally, the high incidence of regulatory inaction due to the need to obtain prior Presidential approval precipitated an increase in the number of distressed banks, while the eventual closure of two or three distressed banks out of about 29 such banks exposes the CBN to accusation of political favours and selective treatments of privileged banks<sup>1086</sup>.

Succinctly, the requirement of presidential approval for the disciplinary and terminal actions against distressed banks has been attacked<sup>1087</sup> as the cause of both the phenomenal rise in number of ailing banks and the intransigence of the bank failure problem in Nigeria<sup>1088</sup>.

In fact, the ability of the CBN to impose sanctions on ailing state-owned banks or those floated by high-ranking retired military officers has been seriously doubted<sup>1089</sup>. Dr

<sup>1083</sup>. See SS. 4 & 24 of NDIC Decree No. 22 of 1988 as amended.

<sup>1084</sup>. Private interview with Chief Z in Lagos on 22/5/97.

<sup>1085</sup>. See Peter Lewis and Howard Stein. *op. cit.*, p. 11.

<sup>1086</sup>. See Ekpenyong, David. B., "Financial Distress In Banks : Nature And Implications ", *The Nigerian Banker, Journal of the Chartered Institute of Bankers of Nigeria*, April - June, 1994, p. 21.

<sup>1087</sup>. See Pascal Dozie, President of the Nigerian Stock Exchange, *Newswatch, Nigerian Magazine*, 29 May 1995, p. 34.

<sup>1088</sup>. See Bankole Falade, Deputy News Editor, *Punch, Nigerian Newspaper*, 16 May 1997, p. 11.

<sup>1089</sup>. See Ekpenyong (1994), *op. cit.*, p. 21.



Adewunmi characteristically underscores the issue that "the fact is also undeniable that there is quite a good number of influential people with equity in banks and can influence political decision. If a general has an interest in a bank, it would be difficult to shut it down by another general"<sup>1090</sup>.

Indeed, some of the failing banks are owned by top retired generals, other ranks, and influential persons. In truth, the decisions concerning banks in Nigeria are more political than economic accounting for the non-resolution of the failed banks problem since many of the ailing banks would have been shut down by a freer regulator acting on economic rationale<sup>1091</sup>. The President of Chartered Institute of Nigerian Bankers laments the politicisation of failed banks' problem, and contends that " the involvement of government at that level is undesirable when it comes to dealing with erring and unhealthy banks"<sup>1092</sup>.

It is in the light of above political and legal factors complicating the regulatory and supervisory duties of CBN and to some extent the NDIC, that demands for an autonomous and independent CBN have attained a higher crescendo with specific calls for de linking the CBN from all non- parliamentary forms of political controls<sup>1093</sup> and the institution of parliamentary control over the appointment and removal of key CBN officers upon the inception of a democratic governance<sup>1094</sup>. The Governor of CBN<sup>1095</sup> also advocates empowerment of the CBN with necessary powers to deal with recalcitrant

<sup>1090</sup>. Private interview in Lagos on 17/6/97.

<sup>1091</sup>. Loc. cit.

<sup>1092</sup>. Loc. cit.

<sup>1093</sup>. See Bankole Falade. *op. cit.*, p. 11. See also Odozi (1995). *op. cit.* p. 11. Osa-Afiana. *op. cit.*, p. 39.

<sup>1094</sup>. See Osunbor, O.. " Legislative And Institutional Developments In The Banking Industry ". in FITC. *A Decade of Innovative Bankers Training*. (Financial Institutions Training Centre, Lagos, Nigeria, 1992) p. 80.

<sup>1095</sup>. See Ogwuma (1993). *op. cit.*, pp. 156 - 157.

banks, and its endowment with full independence, underscoring that "no legislative initiative has been taken in that direction"<sup>1096</sup>.

The lack of efficacy of CBN's regulatory and supervisory powers is further demonstrated by the fact that the apex bank only regulate a fraction of the banking system. The primary mortgage institutions are regulated and supervised by the Federal Mortgage Bank, a parastatal of the Federal Ministry of Works and Housing<sup>1097</sup>, while another category of banks, the community banks, are regulated and supervised by the National Board for Community Banks<sup>1098</sup>. Suffice it to assert that the CBN is much of a passive observer of the activities of these banks and financial institutions, since the law exempt their activities from the general regulatory powers of the CBN under the BOFID<sup>1099</sup>. This fact explains the inability of the CBN to account in any major degree for the turmoil in the Nigerian financial system.

The revelation of the complete impotence of the Nigerian financial regulators and its effects on the banking crises that engulfed the nation confirms the thesis that widespread failure of development programmes due to programme functionaries simply not performing their roles and the success of vested interests in fostering corruption and cornering benefits has made these two issues "the core concern of development programs worldwide"<sup>1100</sup>. It has been rightly argued that "no set of program policies, alone could underwrite any program's success, unless supported by responsive performance of

<sup>1096</sup>. Ibid., p. 157.

<sup>1097</sup>. See CBN, Annual Report and Statement of Accounts, 1995, p. 52.

<sup>1098</sup>. See CBN, Annual Report and Statement of Accounts, 1995, p. 19.

<sup>1099</sup>. See SS. 51 (1) (c). & 52 of BOFID No. 25 of 1991 as amended.

<sup>1100</sup>. See Jain, Pankaj. S., " Managing Credit for the Rural Poor : Lessons from the Gramcen Bank ", (1996) World Development, Vol. 24, No. 1 , p. 80.



functionaries"<sup>1101</sup> with appropriate policy mix that ensures and assures the development and empowerment of the functionaries.

The absence of these concerns and suitable policy measures in the financial deregulation programme of the Nigerian banking system allowed powerful and corrupt political functionaries, their political allies and coerced regulators to undermine the programme. Indeed, the malignant disease of banking deregulation in Nigeria has been correctly diagnosed by Lewis and Stein<sup>1102</sup> in locating "the main failure of Nigeria's financial deregulation in the political and institutional setting of reform"<sup>1103</sup> and emphasising that the "institutional mechanisms needed to supervise and regulate banking under the new system was absent"<sup>1104</sup>. The absence of the regulatory institutional mechanisms and the presence of political interventionism precipitated the wide ranging banking and financial crises witnessed in the country in the aftermath of financial deregulation.

#### **10.4 Regulatory distortions and Policy inconsistencies: Deregulation asunder**

The regulatory and policy confusion that accompanied financial deregulation of the Nigerian banking system has led to a rational conclusion that the policies and rules were not products of informed research<sup>1105</sup>. Neither the tenets of the McKinnon-Shaw financial deregulation theory nor experience of other countries was reflected in the financial policies and their sequences. A quick reflection on some of the most controversial regulatory and

<sup>1101</sup>. Ibid., p. 87.

<sup>1102</sup>. Peter Lewis and Howard Stein, op. cit .

<sup>1103</sup>. Ibid., p. 5.

<sup>1104</sup>. Loc. cit.

<sup>1105</sup>. See Kusamotu, A. S. ( Mrs )., " Questions And Comments " in The Nigerian Banking And Finance Industry In Transition : Shaping The Future, 1992 Bank Directors Seminar Papers And Proceedings, (Financial Institutions Training Centre, Lagos , Nigeria, 1992 ) p. 57.

policy directives and their effects will put the magnitude of the issue into a better perspective.

Although, the Mckinnon-Shaw theory of financial liberalisation, as well as the experiences of countries like Chile<sup>1106</sup>, Argentina<sup>1107</sup>, and U.S.A<sup>1108</sup>, cautioned against complete deregulation of interest rates in a country with macroeconomic instability, and underscored the importance of having in place adequate regulatory and supervisory frameworks before deregulation, Nigerian policy makers were unpersuaded. Interest rates were prematurely and completely deregulated in August, 1987 despite the earlier warning in January of the same year by the CBN<sup>1109</sup> against such liberalisation in the country's peculiar circumstances. The interest rates were not only deregulated, but the Minimum Rediscount Rate (MRR) was set very high indicating to the market the high rates to be charged<sup>1110</sup>. It was not surprising that the market responded positively and interest rates skyrocketed.

Furthermore, no legal or regulatory framework was provided for financial deregulation at all<sup>1111</sup>. Although financial deregulation commenced in 1987, new banking

<sup>1106</sup>. The country began financial reform in 1973, but in 1981 was engulfed by wide spread financial crisis with failure of banks and financieras. see for indepth discussion Andres Velasco. " Liberalization, Crisis, Intervention : The Chilean Financial System, 1975 - 85 ", in V. Sundararajan and Tomas J. T. Balino (eds.), Banking Crises : Cases and Issues, International Monetary Fund. Washington,(1991). p. 113.

<sup>1107</sup>. Financial reform in the country commenced in 1977, and resulted in endemic banking crisis in March 1980 which later pervaded the financial system. see for greater details Tomas J.T. Balino, " The Argentine Banking Crisis of 1980 ", in V. Sundararajan and Tomas J.T.Balino (eds.), Ibid. p. 58.

<sup>1108</sup>. The financial deregulation in U.S.A was undertaken in stages and a time table was set for the liberalisation of the depository interest rates between 1982 and 1986, yet bouts of financial crisis captured the country with a reported failure of 184 U.S. banks in 1987, and another set of 362 U.S. banks failed in 1989 and 1990. see for fuller analysis generally, Canova, op. cit., see also Benston, op. cit.

<sup>1109</sup>. See CBN, Credit Policy Guidelines For 1987 Fiscal Year. Monetary Policy Circular No. 21, p. 9.

<sup>1110</sup>. See Olashore. O., Perspectives on Finance. Banking and Economic Policy in Nigeria. op. cit., p. 71.

<sup>1111</sup>. see Ekpenyong, David. B., " The Impact Of Regulation And Deregulation On The Banking Sector : Role of Regulators And Operators ", The Nigerian Banker, Journal of the Chartered Institute of Nigeria, January -June 1995, p. 11. See further Umunnaehila, Allwell., Bank Failure in Nigeria : History, Causes and Remedies, op. cit., p. 61.



and financial services law was enacted only about four years later in 1991. Additionally, the regulatory agency, CBN was not equipped with necessary regulatory and supervisory powers, conditionally as they are until 1991. The finance companies benefited mostly from this regulatory ambivalence since they operated virtually without any form of regulation until 1991, subjecting the banks which were still encumbered by the old repressive banking laws to destructive competitive disadvantages.

Curiously, the CBN engaged in administrative subversion of the CBN and BOFID Decrees of 1991 when it imposed interest rate control on the banks in 1991 and 1994. It also continued to prescribe sectoral and directed allocation of credit by the banks to preferred sectors and persons, contrary to these Decrees that had divested<sup>1112</sup> it of both the powers of interest rate regulation and mandatory directed credit.

Similarly, Prudential Guidelines for banks, a Capital Adequacy Standard, and a General Statement of Accounting Standard were introduced only in 1990 after the first bouts of banking failure had become noticeable. In fact, neither regulatory framework nor prudential guidelines were in existence until banks started collapsing.

Yet most bank failures in Nigeria were caused by direct policy and regulatory stipulations. It is on record that the Federal Ministry of Finance Circular<sup>1113</sup> of 1989 which directed the transfer of accounts of Federal and State Governments, and parastatals from the commercial and merchant banks to the CBN precipitated liquidity crises<sup>1114</sup> among banks from which many did not recover. The circular caused a massive run on the banks by their largest depositors, and simultaneously denied banks the privilege of set-off against

<sup>1112</sup>. The 1991 CBN and BOFID Decrees did not grant the CBN powers of interest rate regulation and directed credit.

<sup>1113</sup>. See Circular Letter Ref. Noc/ 2700/v/226 of 26 May 1989.

<sup>1114</sup>. See Ojo ( 1994 ), *op. cit* p. 16. see also Yahaya, M.I., " The Changing Roles And Functions Of The Banking Industry In A Developing Economy ", in *The Nigerian Banking And Finance Industry In Transition : Shaping The Future*, ( 1992 ) *op. cit.*, p. 89. The private interview with Dr Adewunmi, the President of the Chartered Institute of Bankers of Nigeria on 17/6/97, further confirmed this assertion.

some of the indebted parastatals. Both the CBN and NDIC had to undertake generous lifeboat operations to rescue many leading banks<sup>1115</sup>. These liquidity crises were complicated by pre-emptory issuance of compulsory stabilisation securities to banks by the CBN as liquidity mopping operations<sup>1116</sup>, although the major source of excess liquidity, the Federal Government, was unstoppable. Suffice it to say that by sterilising the banks' funds without any interest, the stabilisation securities accelerated the liquidity squeeze on many banks.

Additionally, some other measures designed as prudential regulation or monetary policy measures backfired essentially because they were introduced almost simultaneously as the banks were experiencing liquidity crises. Thus, the hiking of minimum paid up capital by banks in 1990, the abolition of foreign guarantees of Naira denominated loan<sup>1117</sup>, the requirement of Naira deposit for foreign exchange operations, and the merging of banks' forex account with current accounts at CBN as from June 19, 1989, all combined to accelerate the financial collapse of many banking corporations. Professor Nwankwo concludes that the "illiquidity, the tendency to disintermediation, increasing securitisation, high short-term interest rates, the reverse yield curve, and resort to the capital market, all stem from the withdrawal of public deposits and other public policy instruments mopping up excess liquidity in the market"<sup>1118</sup>.

Indeed, one of the greatest distortive policies of the Nigerian financial deregulation programme was the premature liberalisation of the capital account and foreign exchange

<sup>1115</sup>. See NDIC Annual Report and Statement of Account. 1990. see also Adewunmi, Wole., " Discussant " in Innovations, Technology & the Nigerian Finance Sector, Papers and Proceedings of the Bank Directors Seminar. 1990, (Financial Institutions Training Centre, Lagos, Nigeria, 1990) p. 27.

<sup>1116</sup>. See CBN, Monetary Policy Circular No. 24 (Amendment No. 1) of August 2, 1990 which re-introduced stabilisation securities for mopping excess liquidity in the banking system. see Ojo (1994), p. 17.

<sup>1117</sup>. See Nwankwo, G.O., Money and Capital Markets in Nigeria Today, University of Lagos Press. Lagos, (1991) p. 19.

<sup>1118</sup>. Ibid., pp. 31 - 32.



market at the onset of the liberalisation programme. This contradicted the prognoses of the Mckinnon-Shaw theory of financial liberalisation and other pundits who have argued that capital account should be deregulated only at the last stage of financial reform<sup>1119</sup>. It was not surprising that all the vices that may accompany premature liberalisation of the capital account like exchange rate fluctuations, appreciation of the exchange rate of domestic currency, foreign exchange speculations and illicit capital movements, occurred.

It must be underscored that the banks were also under intense regulatory interventions and controls that had nothing to do with prudential purposes, but were purely redistributive. Whilst the Mckinnon-Shaw theory of financial deregulation preaches reduction of financial repression during liberalisation<sup>1120</sup>, the Nigerian deregulation exercise appears to have increased financial repression. All the financial repressive measures such as directed credit, sectoral allocation of credit and credit ceilings were retained<sup>1121</sup>. In fact, new directed credit programmes were introduced as banks were directed to provide mandatory funding for the National Housing Fund programme<sup>1122</sup> as well as mandatory credit facilities for privatisation<sup>1123</sup> exercise of the government, even though most privatised ventures were economically unviable.

Many more instances of regulatory and policy shortcomings undermining financial deregulation may be cited. The Mckinnon-Shaw hypothesis recommends gradual opening of bank entry<sup>1124</sup> and recapitalisation of the undercapitalised government banks<sup>1125</sup> before

<sup>1119</sup>. See Sebastian. Edwards, op. cit.

<sup>1120</sup>. See Mckinnon (1973). op. cit., p. 8.

<sup>1121</sup>. See Adewunmi. Wole., " Distress In The Financial System ", in The Nigerian Banking And Finance Industry In Transition : Shaping The Future. (1992), op. cit., p. 102.

<sup>1122</sup>. see National Housing Fund Decree No. 3 of 1992 which requires banks to pay 25% of their loan portfolios to the National Housing Fund.

<sup>1123</sup>. See CBN, Monetary Policy Circular No. 23 ( Amendment No. 1 of January 1989 ).

<sup>1124</sup>. See Mckinnon (1991). op. cit., pp. 7 & 53.

<sup>1125</sup>. Loc. cit.

instituting financial market competition. Nigerian financial policy makers however rejected this rational course. Mass entrance of ill-conceived banks was permitted, even though the upsurge in banking applications was motivated by the "need to secure adequate monetary reserves for political and personal purposes"<sup>1126</sup> from the lucrative foreign exchange subsidies afforded by bank charters. In fact, almost all leading politicians in Nigeria established their own banks and the two presidential candidates that contested the 1993 Presidential elections in Nigeria, Chief M.K.O. Abiola and Alhaji Otman Bashir Tofa have substantial interests in two banks<sup>1127</sup>.

In the circumstances, the political elite of the Nigerian society and their banking pundits invaded the banking industry often with their less than honourable financial pursuits. The non-recapitalisation of the old public banks while exposing them to frenetic financial competition led to the demise of old banks such as NBN, ACB, PAN AFRICAN BANK and others. In the same vein, the privatisation aspect of the deregulation programme was thrown into commotion by the presidential fiat<sup>1128</sup> of August 1992, which in a remarkable regulatory turnabout changed the existing law on privatisation by mandating the privatisation of public banks hitherto prohibited<sup>1129</sup>. The sporadic and unplanned nature of the presidential privatisation order permitted acrimonious and fraudulent ownership of the privatised banks' shares<sup>1130</sup>.

<sup>1126</sup>. See Aderemi, Adedamola. O., " Legal Framework For Establishing A Bank In Nigeria : A Critical Appraisal " (1991) 14 The Gravitas Review of Business & Property Law, No. 15, p. 57.

<sup>1127</sup>. Chief Abiola is a director of Habib Bank Nigeria Limited, and Alhaji Tofa was the Chairman of the Century Merchant Bank until 1992. The Century Merchant Bank has now failed.

<sup>1128</sup>. See Bernard B. A. Verr, " Post - Privatisation Appraisal Of Control And Management In Privatised Banks : The Need For A Golden Share " in Ayua I. A. and Owasanoye B. (eds.) Privatisation Of Government Owned Banks And The Issue Of Ownership And Control ( Legal And Economic Perspectives ), op. cit., p. 66.

<sup>1129</sup>. See Schedule 1 Part I of Privatisation And Commercialisation Decree No. 25 of 1988 now repealed by Decree No. 78 of 1993.

<sup>1130</sup>. See Bolaji Owasanoye and T. A. T. Yagba. " Legal Framework For Privatisation Of Banks In Nigeria" in Ayua and Owasanoye ( eds. ). op. cit., p. 15.



Perhaps, the greatest travesty of the policy and regulatory inconsistencies and favouritism of the Nigerian financial deregulation is the financial crises and banking distress that had been allowed to enveloped the country's financial system by the political authority. Although failing banks had been identified in the system as back as 1989, the CBN was not granted the regulatory powers to deal with failing and failed bank until 1991. Eventually when the powers came they were inadequate and ineffectual, and conditional upon the Presidential approval. Now, the Head of State has refused<sup>1131</sup> to grant the approval for the liquidation of some distressed banks that both the CBN and NDIC felt are polluting the system.

It may be asserted that the whole financial deregulation programme had been riddled with confusion and uncertainty by the government's policy intransigence, instability and inconsistency. The military government has persistently refused to abolish the dual rate exchange mechanism which allows foreign exchange subsidies to the political class, even though distortive of the foreign exchange market and destructive of the country's external equilibrium. The deregulatory policy measures had always been unstable with interest rate deregulation in 1987, reimposition of interest rate control in 1991, another liberalisation of interest rate in 1992, followed by reinstatement of interest rate control in 1994, and finally, the liberalisation of interest rate in 1996.

During the years, the policy stance of the government had varied intermittently. Between 1987 and 1993 there was deregulation, but in 1994 a control regime was adopted which later changed to guided-deregulation since 1995 till present time. Additionally, the regulatory stance that was aimed at gradual independence of financial regulator in 1987 - 1993, has changed since 1994 to active curtailment of the financial regulator's independence and powers. The 1997 financial legislative measures<sup>1132</sup> formalised the

<sup>1131</sup>. See Punch, Nigerian Newspaper, 16 May 1997, p. 11.

<sup>1132</sup>. See CBN (Amendment) Decree No. 3 of 1997; BOFID (Amendment) Decree No. 4 of 1997, and NDIC (Amendment ) Decree No. 5 of 1997.

subjugation of the financial regulator, the CBN. It is therefore not surprising that a Deputy Governor of CBN asserts that "generally, there have been difficulties of implementation and serious policy misalignments which have undermined the objectives of the reforms and introduced uncertainty about the sustainability of the entire macro-economic policy framework"<sup>1133</sup>.

### **10.5 Legal Recipe for Macroeconomic Instability: The Bane of Deregulation**

The most fundamental preconditions for a successful financial deregulation have been postulated by Mckinnon-Shaw hypothesis as macroeconomic stability and fiscal balance of the reforming economy<sup>1134</sup>. These preconditions are crucial underpinnings to a deregulatory programme and their absence portends doom for any financial reform involving deregulation. Yet the Nigerian economy on the eve of financial deregulation, and during the reforming programme was characterised by considerable macroeconomic instability and acute fiscal irresponsibility<sup>1135</sup>.

Perhaps the greatest disaster of was the corruptive<sup>1136</sup> massive fiscal deficit<sup>1137</sup> incurred by the Nigerian government through its perennial financing by voluminous

<sup>1133</sup>. See Odozi, V. A., "Keynote Address ", (1993) CBN Economic and Financial Review, Vol. 31, No. 4, Dec. p. 254.

<sup>1134</sup>. See Shaw, op. cit. p. 168; Mckinnon (1991). op. cit., pp. 4 - 10, & 112. see further Fry (1991), op. cit., p. 425.

<sup>1135</sup>. See Twenty Years Of Central Banking In Nigeria : 1959 - 1979, ( Research Department. Central Bank of Nigeria, Lagos, 1979 ) pp. 125-127. see also CBN, Annual Report and Statement of Accounts, 1992, p. 15.

<sup>1136</sup>. The earnings from crude oil sales were diverted to some fraudulent ' dedicated accounts' and thus precluded from being paid into the Federal Accounts, thereby aggravating the financial woes of state and local governments. see Okurounmu, T.O.. ( Deputy Director of CBN Research and Head of Fiscal Analysis Division ), " Fiscal Operations of the Federal Government since 1986 : Policies and Strategies ", ( 1993 ) CBN Economic & Financial Review, Vol. 31, No. 4, p. 269. See also Newswatch, 16 January 1995, p. 9.

<sup>1137</sup>. The Nigerian government's readiness to devote substantial public resources to unproductive white elephant projects even during the era of deregulation has been assailed by the World Bank's public management report as irresponsible public investment. Indeed, the Nigerian government between 1987 and 1991, masterminded a megalomaniac fiscal recklessness by which " (P)ublic capital expenditure, which had probably been the main vehicle for corruption because of the negotiation of large contracts



borrowings from the CBN and the banking system. Financial repression undertaken through government borrowing and the fiscal operations of the government have been underscored as the major destabilising factors<sup>1138</sup> in the Nigerian deregulation programme propelling high rate of inflation and persistent depreciation of the Naira exchange rate during deregulation period<sup>1139</sup>.

It may be underscored that the characteristic large fiscal deficit<sup>1140</sup> of the Nigerian government encumbered the financial deregulation programme with apparent inconsistency and obvious conflicts since restrictive monetary policies were catapulted by expansionary fiscal operations<sup>1141</sup>. Indeed, the fiscal deficit of the Nigerian government had been persistently large and expansive since 1986, thus it has been rightly concluded that for "a great part of the deregulatory era, government had been running budget deficits"<sup>1142</sup>. The Governor of the CBN put the issue succinctly thus :

The greatest problem which has severely constrained the effectiveness of monetary and banking policies in Nigeria in the last few years has

..... increased by around 50 % ". see Rashid Faruqee, Nigeria : ownership abandoned, in Ishrat Husain and Rashid Faruqee (eds. ), Adjustment In Africa: Lessons from Country Case Studies, ( The World Bank, Washington, D. C., 1994 ), pp. 250 - 251.

<sup>1138</sup>. See Ojo, M. O., ( Director of CBN Research ), The Economics Of Controls And Deregulation : The Nigerian Case Study, ( CBN, Research Department Occasional Paper No. 10, Lagos, October 31, 1994 ) p. 16. see also Oke, B. A., ( Chief Research Officer, CBN ). " An Overview of the Shift from Direct to Indirect Approach to Monetary and Credit Control in Nigeria ". ( 1993 ) CBN Economic & Financial Review, Vol. 31, No. 4, p. 317.

<sup>1139</sup>. See CBN, Annual Report and Statement of Accounts, 1992. pp. 13 - 14.

<sup>1140</sup>. The overall fiscal deficit of the government rose to 8.5 % in 1988 and declined to 7.9 % in 1989. In 1990, a fiscal deficit of 10.1 % was recorded which increased to 11.1 % in 1991, before descending to 9.8 % in 1992. These variations are against the norm of 3 - 4 per cent of the real GDP. The CBN financed an average of 77.0 % of the overall deficit between 1988 and 1991, and fully financed the fiscal deficit of 1992 to the tune of 110.0 %. The CBN financing also constituted 64.0 per cent of the credit extension to the government in 1993.(see Appendix IX ).

<sup>1141</sup>. See " Summary. Executive Staff Seminar. CBN ", ( 1993 ) CBN Economic & Financial Review, Vol. 31, No.4, p. 258.

<sup>1142</sup>. See NDIC, Annual Report and Statement of Accounts, 1992. p. 65.

been the persistence of large government deficits and its mandatory financing by the CBN. The financing of government deficits by the CBN increases the monetary base and the level of excess liquidity of the banking system<sup>1143</sup>.

The CBN is severely handicapped in controlling the financing of the massive fiscal deficit of the Nigerian government by legal and political hindrance. The legal dictates of mandatory financing of government deficit by the CBN<sup>1144</sup> and its mandatory role in underwriting of primary issues of government securities<sup>1145</sup> that constrained the Bank's ability to regulate reserves have been stigmatised as the major delimiting factors<sup>1146</sup> of the CBN. The relevant provisions are contained in Sections 27(1)( f ) and(g), 33 and 34 of the CBN Decree as amended<sup>1147</sup>.

Section 27(1)(f)and (g) of CBN Decree empowers the CBN to purchase, sell, discount and rediscount specified treasury bills, treasury certificates, project-tied bonds, and securities of the government. Section 33(1)of CBN Decree authorises the CBN to finance the budget deficit of the Federal Government and provides that "...the Bank may grant temporary advances to the Federal Government in respect of temporary deficiency of current budget revenue..". A mandatory obligation on the CBN for underwriting publicly issued Federal Government loans is imposed by section 34(1) of CBN Decree which provides that "The Banks shall be entrusted with the issue and management of Federal Government loans publicly issued in Nigeria, upon such terms and conditions as may be agreed between the Federal Government and the Bank"

<sup>1143</sup>. See Ogwuma, P.A., ( Governor, CBN ), " The Role of The Central Bank of Nigeria in Monetary and Banking Policy Measures ", ( 1993 ) CBN Economic & Financial Review, Vol. 31, No. 3, p. 156.

<sup>1144</sup>. See Section 33 of the CBN Decree No. 24 of 1991 as amended.

<sup>1145</sup>. See Section 27 of the CBN Decree No.24 of 1991 as amended.

<sup>1146</sup>. See Ogwuma (1993). op. cit., p. 156.

<sup>1147</sup>. see Decree No. 24 of 1991 as amended by Decree No. 3 of 1997.



These provisions have been complicated by the recent amendment to the said Section 33 by CBN Decree 1997<sup>1148</sup> which now allows the Federal Government to borrow from the CBN at a negotiated rate of interest rather than market rate. Section 33(1) of CBN Decree as amended permits the CBN to grant advances to the Federal Government in respect of budget deficit "at such rate of interest as the Bank may negotiate with the Ministry".

The major constraint of deregulation in Nigeria has been located in the failure of the government<sup>1149</sup> and the public sector to adhere strictly to their defined responsibilities<sup>1150</sup>. Although, the Nigerian government at the inception of financial deregulation accepted the ideals of balanced budget and zero borrowing from the banking system during the programme<sup>1151</sup>, however, "none of the desirable objectives was achieved and the failure to achieve fiscal viability disrupted the achievement of the objectives of monetary and exchange rate policies"<sup>1152</sup>.

Indeed, the CBN<sup>1153</sup> and commentators<sup>1154</sup> on the banking system have held the Nigerian government firmly responsible for the inflationary spiral that had ravaged the Nigerian economy due to expansionary fiscal operations by the government. The dominance of the Nigerian government in monetary expansion through its monetisation of

<sup>1148</sup>. See Section 33 (1) of the CBN Decree No. 24 of 1991.

<sup>1149</sup>. See Brautigam, Deborah; " Substituting for the State : Institutions and Industrial Development in Eastern Nigeria " (1997) World Development, Vol.25, No. 7, 1063 at p. 1066.

<sup>1150</sup>. See Ojo (1994). *op. cit.* p. 24.

<sup>1151</sup>. *Ibid.*, p. 28.

<sup>1152</sup>. *Loc.cit.*

<sup>1153</sup>. See CBN Brief, *op. cit.* p. 3. See also CBN, Annual Report and Statement of Account, 1992, pp. 13 - 14, and other various issues of the CBN, Annual Reports.

<sup>1154</sup>. See Nwankwo, G. O., Money and Capital Markets in Nigeria Today, University of Lagos Press, Lagos, (1991), p. 35.

oil receipts or borrowing from the CBN<sup>1155</sup> necessitates the demand by the Governor of CBN<sup>1156</sup> for the delineation of the government's and CBN's responsibility for the maintenance of an acceptable rate of inflation . The Governor also advocates the grant to the CBN of "the freedom necessary to act in such ways and employ such instruments as it considers best to achieve the desired monetary targets"<sup>1157</sup>.

In a contribution to this debate, a Deputy-Governor of CBN<sup>1158</sup> underlines the positive correlation between central bank independence and economic performance in Germany, USA, Switzerland, New Zealand and Canada and posits for the CBN a considerable degree of autonomy. This suggestion had been echoed<sup>1159</sup> within the country with further recommendations of constitutionally mandated balanced budget<sup>1160</sup> to curb fiscal irresponsibility of the government.

The Nigerian scenario illustrates the truth of the aphorism by the economist, Dr Milton Friedman, that the "major source of inflation, this time as every time , has been that the government has spent too much and printed too much"<sup>1161</sup>. Dr Friedman also opines that "the problem of stopping inflation is political, not economic. The problem is having the political will to take these measures"<sup>1162</sup>. This contention is graphically apposite to the Nigerian macroeconomic debacle chronicled above.

<sup>1155</sup>. See Ogwuma, Paul, " The Control of the monetary and Banking System by the Central Bank of Nigeria", (1994) CBN Economic & Financial Review, Vol. 32, No. 1. p. 8.

<sup>1156</sup>. Ibid., p. 10.

<sup>1157</sup>. Loc. cit.

<sup>1158</sup>. See Odozi. V. A., " The Conduct of Monetary and Banking Policies By the Central Bank of Nigeria", (1995) CBN Economic & Financial Review, Vol. 33, No. 1. pp. 11-12.

<sup>1159</sup>. See Osa-Afiana, Lawrence. O.. " Structural Changes And Conflicts In The Financial System ", in Restructuring The Nigerian Financial System For Stability And Development, Papers and Proceedings of the Bank Directors' Seminar, 1994, ( FITC, Yaba, Lagos, 1994 ) p. 39.

<sup>1160</sup>. Ibid., p. 38.

<sup>1161</sup>. See Friedman, Milton., Free Market for Free Men. University of Chicago. Chigaco.(1974). p. 16.

<sup>1162</sup>. Ibid., p. 19.



Indeed, while some inflation rates are tolerable<sup>1163</sup>, stagflation of the phenomenal proportion which has become intractable in Nigeria is economically suicidal to any nation<sup>1164</sup>. Yet the ability of a central bank to curb inflation and the limits of such responsibility depend on its position in the overall political system and on the policy instruments available to it<sup>1165</sup>. In fact the hypothesis of a positive correlation between the central bank's legal basis and the degree of monetary stability achieved in an economy has been confirmed by a range of international comparative studies<sup>1166</sup>.

The independence of the central bank and its officials from undesirable fiscal deficit financing has been postulated as necessary conditionalities for monetary and macroeconomic stability<sup>1167</sup>. These crucial desiderata of an effective central bank are patently absent with respect to the CBN.

#### **10.6 IMF, World Bank and Nigeria : Reforming a Borrowing State**

It is necessary to appraise the roles of IMF and World Bank in the financial deregulation of the Nigerian banking system. While it is generally conceded that the financial deregulation programme was designed and implemented by the Nigerian government and its officials<sup>1168</sup>, it is also acknowledged that the programme had the usual

<sup>1163</sup>. See Andres Velasco ( ed.), Trade, Development and the World Economy, Selected Essays of Carlos Diaz-Alejandro, Basil Blackwell Ltd, Oxford, (1988) p.384.

<sup>1164</sup>. The inflation rate was 61.4 per cent in 1993, and climbed to 72.8 per cent in 1995. See the CBN Annual Reports and Statements of account, 1993 and 1995.

<sup>1165</sup>. See Issing Otmar, " Central Bank Policy - Goals and Reality " in Philip Arestis ( ed. ). Money And Banking Issues for the Twenty-First Century, Essays in Honour of Stephen F. Frowen, Macmillan Press Ltd, London, 2nd edition, (1993), p. 41.

<sup>1166</sup>. Ibid., p. 51. see also Issing, O.. " The Role of the Central Bank and its Responsibility ". in S.F. Frowen and F.P. Mchugh (eds.), Financial Decision-Making and Moral Responsibility, ( London : Macmillan; New York; St Martin's Press ).

<sup>1167</sup>. See Issing (1993). op. cit., p. 44.

<sup>1168</sup>. See " Report on the Seminar on Macro-Economic Policy Analysis for CBN Executive Staff, November 15 - 19, 1993 " ( 1993 ) CBN Economic & Financial Review, Vol. 31, No. 4, pp.258 & 261.

trappings of the IMF and World Bank Structural Adjustment Programme(SAP), and was undertaken with the active pressure and support of the two international financial institutions<sup>1169</sup>.

A relevant conundrum however is whether the IMF and World Bank programme could have been successful having regard to the static political and social milieus of Nigeria and the elitist corruption and hostility to both the IMF and World Bank's reforms. It has been said that the failure of SAP in Nigeria would weaken the influence of the IMF and World Bank in Africa<sup>1170</sup>.

The seeming intransigence which surrounded the negotiation of SAP conditionalities between the Nigerian Government and IMF may be attributed to an established policy bias against the IMF's powers and procedure. Nigeria regarded most conditionalities of the IMF as inappropriate, rigid, and extremely harsh. Hence some years before the Nigeria-IMF controversy, Nigeria advocated "the need for the Fund to show greater flexibility in its adjustment policy prescriptions ....."<sup>1171</sup>.

The country further expressed serious scepticism about the ability and capacity of IMF to exercise "firm surveillance" over sensitive members<sup>1172</sup>. In the words of IMF, "Nigeria's economic policy stance over the past two decades has been characterised by resistance to comprehensive structural adjustment"<sup>1173</sup> This was the policy setting in which the sensitive Nigerian Government challenged the application of both the conditionalities and firm surveillance of IMF to its territorial jurisdiction.

<sup>1169</sup>. Loc. cit.

<sup>1170</sup>. See Financial Times, November 18, 1986, p. 24.

<sup>1171</sup>. See Twenty Years Of Central Banking In Nigeria, op. cit p. 198.

<sup>1172</sup>. Ibid p. 195.

<sup>1173</sup>. See IMF Survey, Vol. 26, NO. 6, March 24, 1997, p. 88.



The factors which underpinned the failure of IMF/World Bank conditionalities such as financial liberalisation may be highlighted here. In the first respect, the nexus between politics and economics has been neglected by the Bretton Wood institutions which perceived economics in isolation of its political circumstances<sup>1174</sup> even though market the domain of economic theories is a political, social and legal construct<sup>1175</sup>. The attempt to prescribe economic reform policies in isolation of its political and legal aspects had often invested the IMF/World Bank programme with failure in different countries.

It may be emphasised that "disregard for human rights has not in general constituted a bar to access to the Fund,"<sup>1176</sup> and of course the World Bank. The importance of this assertion assumes urgency with the recent argument by the General Counsel to the World Bank, Ibrahim Shihata that:

Countries which join the Bank as borrowing members expect it to behave in the manner prescribed in its charter, as a source of development finance which is required not to interfere in their political affairs or to judge their domestic political behaviour, rewarding or punishing them accordingly<sup>1177</sup>.

This argument that advocates the maintenance of the status quo of separating economic reforms from its political undercurrents, is antithetical to the lessons of financial reform in countries like Nigeria, and perhaps explains the antagonism and disenchantment with the IMF and World Bank, by the Nigerian population<sup>1178</sup>, which regard the Bretton Wood institutions as financiers of corrupt and inept governments.

<sup>1174</sup>. See Polak, Jacques., *The Changing Nature of IMF Conditionality*. ( *Essays in International Finance*. No. 184, Princeton University, New Jersey, 1991 ) p. 30.

<sup>1175</sup>. See Underhill, Geoffrey. R. D., " Conceptualizing the Changing Global Order " in Richard Stubbs and Geoffrey R. D. Underhill., ( eds. ), *Political Economy And The Changing Global Order*. ( The Macmillan Press Ltd, London, 1994 )p. 18.

<sup>1176</sup>. See Polak, Jacques., *op. cit* p. 31.

<sup>1177</sup>. See Shihata, Ibrahim. F.I., " Democracy And Development ", (1997) 46 *International and Comparative Law Quarterly*, July, 635 at pp. 642 - 643.

<sup>1178</sup>. See Collier, P., *op. cit.*, p. 330.

It has been argued that the protection of political rights are not within the purview of World Bank and IMF, hence "Violation by a member country of the political human rights of a citizen or citizens is not per se a matter that requires a certain action or omission by the Bank"<sup>1179</sup> This opinion although justifiable under the World Bank Charter<sup>1180</sup>, is based on the fallacious premises that political and legal rights can be separated from the economic rights. This is highly contentious. Every political and legal right has its economic content.

Indeed, no economic agent will operate fully under persistent threats to his life or his corporation, or restrictions to commercial information, and activities. The detention without trials of economic agents, seizure of their properties, unfair dismissals, physical harassment, restrictions from associations with other economic agents and denial of freedom of movement which are prevalent<sup>1181</sup> in Nigeria, are neither conducive to sustainable economic activities, free enterprises, nor economic reforms. The economic agents in varying degrees and circumstances, require these rights and freedom for successful pursuit of economic goals. Political liberalism institutes the essential conditions for personal liberty and economic prosperity, and facilitates the operation of free markets<sup>1182</sup>.

The question may however be raised that since the political nature of economic reform is of paramount importance and has been recognised by IMF officials and the World Bank, why is it that such political conditions are not accorded prominence in IMF/Bank SAP. The reality lies in the truism that as a matter of law, political issues are

<sup>1179</sup>. See Shihata, op. cit., p. 640.

<sup>1180</sup>. See Article III, section 5 ( b )of the IBRD Charter.

<sup>1181</sup>. See for a comprehensive discussion of the violation of rights in Nigeria, Ajomo, M. A., and Owasanoye, B., (eds. ), Individual Rights Under The 1989 Constitution, Nigerian Institute of Advanced Legal Studies, Lagos, (1993), especially chapters 2-8.

<sup>1182</sup>. See Posner, op. cit., pp. 24 - 25.



beyond the jurisdiction of both the IMF and the World Bank. The IMF is specifically mandated by Article IV section 3 of its Agreement to "respect the domestic social and political policies of members.." and pay due regards to their circumstances in applying its surveillance powers. The same limitation had been imposed on the IMF in respect of designing adjustment policies for member- states by its Executive Board<sup>1183</sup>.

Regarding the World Bank, Article III section 5 (b) of its Agreement<sup>1184</sup> imposes an obligation on the Bank to pay due attention only to economy and efficiency "and without regard to political or other non-economic influences or considerations". Thus, both the IMF and the Bank are effectively precluded from political considerations. Yet domestic political and legal factors loom large in the failure of economic reform programmes.

It has been posited<sup>1185</sup> that the major economic de stabilising factor in Nigeria<sup>1186</sup>, inflation, is a political problem, and requires a political solution. According to a World Bank expert the "political context of reform in Nigeria proved to be more complex than ....the World Bank .....expected"<sup>1187</sup>. Some IMF experts who studied SAP in Nigeria contend that the country's "experience confirms that inconsistent and unpredictable policies generate internal shocks that translate into extreme volatility in economic and financial variables"<sup>1188</sup>.

<sup>1183</sup>. See IMF Executive Board Decision No. 6056- ( 79/38 ). op cit.

<sup>1184</sup>. See Articles of Agreement of the International Bank for Development and Reconstruction, Dec 27, 1945, (1947) 2 U.N.T.S. 20.

<sup>1185</sup>. See Friedman, op. cit.

<sup>1186</sup>. See Moser, Gary. G.. "The Main Determinants of Inflation in Nigeria", (1995) 42 IMF Staff Papers No.2, 270 at p. 285.

<sup>1187</sup>. See Faruqee, Rashid.. "Nigeria: ownership abandoned" in Ishrat Husain and Rashid Faruqee (eds.) Adjustment In Africa. Lessons from County Case Studies. The World Bank, Washington, D.C., (1994), p. 238.

<sup>1188</sup>. See Gary Moser, Scott Rogers, and Reinold van Til., Nigeria: Experience with Structural Adjustment, 1986-94, IMF Occasional Paper, Washington D.CD.,(1997), 148.

It may be underscored that the inconsistency and volatility observed in Nigeria can be traced to the political and legal instability that dominated the country's polity. Political stability is regarded even by the most conservative of economists as indispensable requirement for economic reforms and sustainable growth, yet the military regimes according to the secretary-general of the Commonwealth of nations, Chief Emeka Anyaoku<sup>1189</sup>, have a long record of inconsistency and inbuilt instability. Incredible, as it may sound, the World Bank and IMF, have failed to appreciate the nugatory effects of military government induced political instability on economic reform measures and programmes in Nigeria. The legal and political environments of reforms are as important as the economic factors.

The IMF and World Bank must shed their organisational and legal dogmatism and face the reality that in the real world as in Nigeria politics can neither be separated from economics nor law. A former chief economist of the IMF, Jacques Polak<sup>1190</sup>, endorses the call by Richard Feinberg<sup>1191</sup> for the inclusion of some elements of political conditionality in IMF/ World Bank programmes. Indeed, the example of the European Bank for Reconstruction and Development (EBRD) charter<sup>1192</sup> is cited which commits the organisation to "the fundamental principles of multi-party democracy, the rule of law, respect for human rights and market economics"<sup>1193</sup>. Most recently, the IMF Managing

<sup>1189</sup>. Quoted in Soyinka, op. cit., p. 136.

<sup>1190</sup>. See Polak, Jacques., op. cit p. 51.

<sup>1191</sup>. See Feinberg, Richard E., The Bretton Woods Agencies and Sub-Saharan Africa in the 1990s : Facing the tough Questions, ( Country Economics Department Working Paper No. 661. Washington, D. C., World Bank, 1991 ).

<sup>1192</sup>. See Agreement Establishing the European Bank for Reconstruction and Development, (1990) 29 I.L.M. 1077.

<sup>1193</sup>. See Preamble to EBRD Agreement, *ibid*, p. 1083. See also Polak, Jacques., op. cit p. 51. see for a lucid discussion of the EBRD position on political conditionalities - John Fleming, " Economic Reform in Eastern and Central Europe ", lecture given to Oxford University International Political Economy Society, Brasenose College, 26 October 1992 . see however Stephen Gill, " Knowledge, Politics, and Neo - Liberal Political Economy " in Stubbs, R. and Geoffrey R. D. Underhill., *Political Economy And The Changing Global Order*. ( The Macmillan Press, London, 1994 ) pp. 83- 86.



Director, Michel Camdessus, rightly asserts, "the key to development is outside the scope of economics. It is peace and democracy"<sup>1194</sup>.

The Bretton Wood institutions have no effective means of supervising the implementation by member-states of the political, social and even their areas of purview, the economic programmes of adjustment. The mechanism for implementation of IMF/World Bank economic conditionalities require major overhauling, and both institutions we submit cannot directly and effectively take cognisance of political and social aspects of SAP<sup>1195</sup> or conduct effective surveillance without the amendment of their present Treaties or Agreements.

It may be reiterated that the implementation and supervisory limitations of the IMF and World Bank and the in discipline observable in most SAP countries had made the failure of SAP in Nigeria a high possibility even before the programme was initiated. The likelihood of SAP failure in Nigeria may be attributed to a combination of "demonstration effect" and "peer group influence". In this respect, it has been observed that the difficulties experienced by such African nations as Zambia, Ugandan, Gambia, Sierra Leone and Liberia which took IMF loan may be traced to the inability of those countries to exercise the required discipline<sup>1196</sup> and there "is nothing to suggest that Nigeria will behave differently"<sup>1197</sup>. Olashore underlines the high failure risk of the IMF programme in Nigeria because of:

the inability of Nigerians to exercise the required financial discipline which could ensure the optimum results from an IMF stabilization package. If past experience is a measure of our ability to be fastidious to detail and resolute in our commitment to stated public

<sup>1194</sup>. See Michel Camdessus, IMF Survey, 17 July 1995. p. 220.

<sup>1195</sup>. The IMF has introduced external evaluation of its Enhanced Structural Adjustment Facility(ESAF). See IMF Survey, Vol.25, No.21, Nov. 11, 1996.

<sup>1196</sup>. See Olashore. op. cit p. 235.

<sup>1197</sup>. Loc. cit.

objectives, it appears highly unlikely that we would be able to adhere to a stabilization package conscientiously. In that event, the nation would stand to be discredited far more than in the present situation<sup>1198</sup>.

Considering this state of affairs, the IMF and the World Bank are not totally blameless in the failure of the Nigerian financial reforms. The two institutions as the consultants to the Nigerian government knew the economic, political and legal defects in the designed programme. However, the IMF and World Bank neglected the economic, political and legal imbalances in the Financial deregulation programme, and supported it whole- heartedly.

It is damning that the lessons from international liberalisation experiences in the 1970s and 1980s were ignored, when the Nigerian financial deregulation was designed with the IMF and World Bank support. Both institutions encouraged and financed the liberalisation of the capital account as a first step of financial deregulation in Nigeria, despite the recorded disastrous effects of such premature act of liberalisation. It has been observed also that the IMF, World Bank, and other western partners "have been prepared to turn a blind eye to policy failures"<sup>1199</sup> in Nigeria due to commercial interests, naive trust of Nigerian government, and avoidance of the de stabilisation of the most populous African nation<sup>1200</sup>.

Nigeria was characterised by administrative, institutional and policy credibility problems which were further compounded by grossly inefficient and corrupt leadership and civil service that were antagonistic of the SAP programme because it may curb rents and profiteering<sup>1201</sup>. The capability of these disenchanted groups to derail SAP was so

<sup>1198</sup>. Loc. cit.

<sup>1199</sup>. See Financial Times. 16 March 1992, p. 1.

<sup>1200</sup>. Loc. cit.

<sup>1201</sup>. See Financial Times. November 18. 1986. p. 24.



formidable that Paul Mosley and others<sup>1202</sup> suggested that a pay-off or compensation of such groups be built into any SAP programme.

In spite of these credibility problems, IMF and the Bank have no well defined credibility test hence once a government appends the letter of intent or loan documentation and indicate willingness to undertake IMF/ World Bank programmes, the credibility of implementation or veracity of implementation commitment fades to insignificance<sup>1203</sup>. Indeed, the utter emptiness of IMF stand-by arrangement is aptly underscored by Professor Richard Edwards in this manner :

The IMF's approval of a stand-by arrangement does not guarantee that the country will in fact pursue all of the policies stated in its letter of intent. Most of the policy intentions are not even made performance criteria. Further, there is no guarantee that the policies, even if pursued, will be successful in solving the particular country's problems.

With respect to performance criteria, which have clear implications on the country's right to draw from the IMF, there have been enough cases in which countries failed to meet the criteria that this possibility must be assessed whenever a governmental or private creditor places reliance on the debtor country's stand-by arrangement with the IMF. The only certainty is that consultations will continue between the IMF and the country<sup>1204</sup>.

Many reasons may be identified for the tendencies of IMF and World Bank to grant financial assistance to member-states despite their credibility and corruption problems. It appears that the IMF has a legal obligation to provide financial assistance to

<sup>1202</sup>. See Mosley, P., et al, op. cit. pp. 102 & 307- 308.

<sup>1203</sup>. The futility of an IMF Agreement has generated a long list of recidivist debtors who are perpetually rescheduling their debts with the IMF assistance. A study has shown that between 1960 and 1980, only 42 members accounted for 78 per cent of all stand-by and extended credits, while 24 countries received IMF credits for more than 10 consecutive years. See Walters, Alan., Do we Need the IMF and the World Bank?, (Institute of Economic Affairs, London, 1994 ) p. 12. See also Vaubel, R., " The Political Economy of the International Monetary Fund " in R. Vaubel and T. D. Willett ( eds. ). The Political Economy of International Organizations : A Public Choice Approach, ( Boulder, Col.: Westview Press, 1991 ) pp. 204 - 244.

<sup>1204</sup>. See Richard W. Edwards, Jr. " Is An IMF Stand -By Arrangement A " Seal Of Approval " On Which Other Creditors Can Rely? " ( 1985 ) 17 International Law And Politics. 573 at 588.

its members with financial difficulties. Under Article I(v) of the IMF Agreement<sup>1205</sup>, one of the purposes of the IMF is "To give confidence to members by making the general resources of the Fund temporarily available to them under adequate safeguards, thus providing them with opportunity to correct maladjustments in their balance of payments without resorting to measures destructive of national or international prosperity".

Furthermore Article V section 3(a) of the said Agreement provides that "The Fund shall adopt policies on the use of its general resources, including policies on stand-by or similar arrangements, and may adopt special policies for special balance of payments problems, that will assist members to solve their balance of payments problems in a manner consistent with the provisions of this Agreement and that will establish adequate safeguards for the temporary use of the general resources of the Fund"

It is submitted that under the above Articles of the Agreement, the IMF has a legal obligation to make its resources available to a member-state with balance of payment problems provided such a member is willing to adopt policies prescribed by the IMF in this respect. Thus, it would have been ultra vires of the IMF if it had denied Nigeria access to the IMF resources when the country had indicated her willingness to adopt policies mandated by IMF. The grounds of ineligibility for the use of IMF's resources are stated in Article V section 5 of the IMF Agreement<sup>1206</sup>, and the said section did not stipulate potential or actual lack of performance credibility of a member as a ground of ineligibility. Under Article V section 5, a member can become ineligible only if the "member is using the general resources of the Fund in a manner contrary to the purposes of the Fund". There was no evidence of this kind of behaviour on the part of Nigeria, and suspicion of governmental corruption is not a ground for ineligibility.

<sup>1205</sup>. See IMF Article of Agreement. Supra.

<sup>1206</sup>. Supra.



Additionally, both the IMF and World Bank have been accused of offering member-states huge financial assistance so as to encourage such countries to embark on SAP. The World Bank in the particular case of Nigeria granted the country huge volumes of loan reportedly " the largest amount ever given to an African country by the Bank "<sup>1207</sup> to persuade the government to embark on economic reforms.

This is despite repeated warnings by economists and specifically Professor Mckinnon<sup>1208</sup> that IMF and World Bank should stop offering bribes to third world nations to engage in adjustment since such "countries have been cavalier in their use of foreign capital although a puritanical approach would have served them better "<sup>1209</sup>. Finally, the corporate interests of IMF and World Bank as lenders often appear to influence their tendencies to lend because without lending activities, the Bretton Wood institutions may become redundant and unprofitable.

Perhaps the greatest problems of IMF/World Bank programme in Nigeria may be the monitoring and implementation limitations of the IMF and World Bank in the face of the refusal of the Nigerian Government to submit to any form of surveillance, monitoring and control by either the IMF and the World Bank. The celebrated ingenuity<sup>1210</sup> of Babaginda regime in agreeing to IMF stand-by without drawing the funds was a disingenuous mechanism designed to reopen international credits to Nigeria and simultaneously prevent IMF from exercising rigorous monitoring and supervision of Nigeria under the SAP. The Nigerian Government effectively retained its freedom of reckless actions.

<sup>1207</sup>. See Olukoshi, Adebayo., op. cit p. 97.

<sup>1208</sup>. See Mckinnon, Ronald., ( 1981 ) , op. cit pp. 116 - 117. see also on the same issue of bribery, Fry , Maxwell J., Money, Interest, And Banking In Economic Development, op. cit p. 345.

<sup>1209</sup>. See Mckinnon, Ronald., ( 1973 ) , op. cit p. 176.

<sup>1210</sup>. See Mosley, Paul., et al ,op. cit p.61.n.6.

It has been correctly asserted that unlike most developed and developing countries with different forms of agencies of restraint either internal or external, the Nigerian governments have consistently failed to embrace the idea of agency of restraint whether internal or external<sup>1211</sup>. Perhaps it may be emphasised that unless the IMF and World Bank ensures that borrowing states like Nigeria institute legally viable internal agencies of restraint<sup>1212</sup> such as independent central bank, judicial controls and parliamentary or other credible supervision into economic reforms, the SAP and programmes of such nature will continue to be nugatory until individual countries voluntarily establish the necessary restraint agencies. It is also crucial that the Articles of Agreement of IMF and World Bank are amended to give these institutions some authorities over political and legal conditionalities that would ensure effective surveillance over debtors.

## 10.7 Conclusions

A critical insight into the financial deregulation of the Nigerian banking system reveals the core destabilising factors as the regulatory powers and political corruption of the ruling class and its induced political instability, the legal and political subversion of the CBN and the NDIC, as well as the regulatory, policy and legal distortions of the programme. The conclusion is that deregulation happened too quickly and all at once, while the problems of directed lending, sectoral allocation and credit ceilings were neglected.

The role of law that motivated fiscal recklessness and macro-economic instability by the ruling class must also be underscored. These issues converge into one factor of legal and political imbalance in the Nigerian banking deregulation. This is the lesson from the Nigerian experience which the IMF and World Bank must appreciate. A programme of

<sup>1211</sup>. See Collier, Paul., op. cit p. 330.

<sup>1212</sup>. See Collier, P., op. cit., p. 331.



financial liberalisation must be multidimensional, pragmatic and functional. The legal imperatives are as important as the economic and political elements. There should be macroeconomic stability and fiscal balance and minimum standard of public accountability and honesty by public officials.

**PART VI: CONCLUSIONS AND RECOMMENDATIONS**



## **CHAPTER XI**

### **CONCLUSIONS**

#### **11.1 Introduction**

This chapter contains the conclusion of this work and its proposals for reform. It is divided into eight sections. The first section is the introduction. The second , third and fourth sections contain some remarks, the findings on research issues, and a review of the hypotheses. The fifth, sixth and seventh sections discuss the regulatory, institutional, political and legal reforms proposed in this work. The lessons of Nigerian financial deregulation for the theory of financial liberalisation are examined in the eighth section.

#### **11.2 Remarks**

The bank failures and compounded economic crises that have attended financial deregulation in many developing countries have combined to make the issue of financial regulation and deregulation of the banking system the 'issue du jour'. Yet most enquiries on the issue have been dominated by economic discipline because the subject is regarded as largely one of economics. The legal scholarship makes no significant direct presence in the debate. The economic approach to the issue however has been inadequate and incomplete. Finance traverses the boundary of economic discipline, and crucial understanding of the issue of financial regulation and deregulation requires a multi-disciplinary enquiry that highlights the interface between economics, law, politics and history.

This thesis employs a pragmatic approach to the issue, while emphasising the role of law that is otherwise neglected in existing discourse on the subject-matter. The centrality of economics to the issue of financial regulation and deregulation compels an

examination of the economic theories underpinning banking laws. Hence, the thesis considers the Mckinnon-Shaw hypothesis and classical theory.

The influence of Mckinnon-Shaw hypothesis on exposition of the problem of financial and regulatory repression of the banking system, and its prognosis of financial liberalisation has been underscored. Additionally, the interventionist orientation of banking regulation has been traced to the Keynesian and classical theorists. The influences and prognoses of these theories have been examined on the practice and impact of financial regulation and deregulation of the Nigerian banking system.

A number of research issues were formulated and examined in conducting the enquiry to banking regulation and deregulation in Nigeria. It is apposite to summarise the findings of this thesis in respect of the research issues .

### **11.3 Findings**

#### **i) The nature and modes of financial regulation in Nigeria**

This work finds that the nature of financial regulation in the country was originally laissez-faire that subsequently changed first to minimalist regulation, and later to liberal regulation respectively. The regulatory nature became strictly interventionist in 1968, and maintained this characteristic until 1986 when financial deregulation attained regulatory ascendancy in Nigeria. During laissez-faire era, there was virtually no regulatory prescriptions for banks. The periods of minimalist regulation and liberal regulation introduced liberal prudential requirements. However, the interventionist era occasioned the introduction of full cornucopia of regulatory prescriptions and market restrictions on banks. The modes during financial deregulation have varied between attenuation and re-imposition of regulatory demands and their complete abolition.

#### **ii) The changes in the regulatory approaches of the Nigerian banking system**

The Thesis identifies changes in regulatory approaches of the Nigerian banking system as demonstrated in (i) above. It discovers varied factors that influenced these changes. The change from laissez-faire to minimal regulation and liberal regulation



respectively, were influenced principally by the calamitous and perennial failure of banks during these periods. The movement from liberal regulation to interventionism was motivated by diverse reasons including the growth of economic nationalism after Nigerian independence, financing needs of Nigerian government, ideological romance with socialism, intellectual influences of western scholars, and the Nigerian civil war. A very great underlying factor was the socio-political milieu of the Nigerian society.

### iii) The impacts of the banking regulation on the Nigerian banking system

It is found upon reflection on the interventionist era that interest rate regulation generated low rates, discouraged savings, scared away depositors, and encouraged capital flight. The credit regulation through credit ceilings and sectoral credit allocation succeeded only in diverting credit to inefficient industry and influential Nigerians who squandered such credit. Most banks were unable to recover such misapplied loans and thus became invested with large poor performing loan portfolio and decapitalisation. The indigenisation regulation converted the banking system into government department with attendant political control, corruption and non-commercial interference. It also scared away foreign banking investors.

The exchange control law diverted foreign exchange to influential groups, created artificial scarcity, overvaluation of naira and capital flight. The deficit financing mandatory law encouraged financial profligacy by Nigerian government, fuelled inflation and crowded out efficient borrowers. The interventionist regulatory structure ensured that Nigerian banks were politicised, corruptive, repressed, uncompetitive, decapitalised and distressed. Yet, no bank was allowed to fail throughout the period and massive distortion of the economy ensued.

### iv) The reason for financial deregulation of Nigerian banking system and its effects

This work finds two inter-related major reasons for banking deregulation. The first reason was that the Nigerian economic problems and mounting debts became worrisome to the international creditors. The second reason was the rigid insistence of IMF and

World Bank that the Nigerian government must deregulate its economy before any financial assistance would be forthcoming from international creditors. Thus, financial deregulation in Nigeria was not borne out of genuine rethinking or repentance by the Nigerian government. It was foisted on the government by its economic circumstances and determined international financial institutions. The effects of banking deregulation have been mixed. It has produced growth of the financial sector and savings, privatisation of Federal Government-owned banks, financial innovation, interest rate escalation, foreign exchange speculation and an army of failed banks and financial institutions. The banking sector is now in distress.

v) This thesis discovers the politicisation of banking regulation and supervision, and human factors as two major factors that precipitated and elongated bank failures in the country. It further found the core destabilising factors of the banking deregulation as the regulatory powers and political corruption of the ruling class, political instability induced by the ruling class, legal and political subjugation of the CBN and NDIC, regulatory and policy distortions, and the laws motivating fiscal recklessness and macroeconomic instability.

#### **11.4 Review of Hypotheses**

Some research hypotheses have been formulated to guide us in analysing the issues. The hypotheses are that :

1. The nature of financial regulation of a banking system has a primarily significant influence on its efficiency, effectiveness and performance.
2. The character and ethics of the political, social and bureaucratic classes and the governance structure of a nation influence the nature of financial regulation and deregulation of the banking system.
3. The modes of financial regulation and deregulation of Nigerian banking system were repressive, corrupt, exploitative and ruinous.



4. A suitable socio-political environment and conducive legal frameworks are critical pre-conditions for the success of a financial deregulation programme.

Concerning the first hypothesis, a comparison of the impacts of the period of regulatory interventionism on the banking system with the effects of banking deregulation reveals the influence of the nature of financial regulation on these results. During banking interventionism, the banks were few, inefficient, ineffective and distressed. The Nigerian economy demonstrated these features of the banking system. The liberalisation era on the other hand, produced massive growth in banking and financial institutions, financial innovation, liberalised banking which enhanced banking efficiency, and growth of savings. This hypothesis is accepted to the extent that the Nigerian banking system was more versatile, virile, efficient and productive during financial deregulation despite the on-going distress and failures.

A constant feature of both eras of regulatory intervention and deregulation is the influence of socio-political milieu of the Nigerian society. The nature of financial regulation was influenced predominantly by prebendal and clientelist politics of the country. Rent seeking and economic acquisition motivated interest rate regulation, credit regulation, exchange control measures and repressive borrowings. This political nature ensured direct control over financial regulation and subjugation of financial bureaucrats.

The financial deregulation also encountered the problems of political milieu of the Nigerian state which has been engulfed by predatory politics. All financial regulatory powers are centralised in political office holders who utilised them for rent-seeking and political purposes. Financial experts are subjugated. The domination of banking deregulation by politicians instigated policy inconsistencies, regulatory ambivalence and instability, regulatory capture, corruption and defective laws. The second hypothesis is also accepted as correct.

The era of regulatory intervention utilised direct control instruments such as interest rate, exchange rate, and credit control regulations. These measures resulted in

massive government financing by banks and CBN, financial irresponsibility, inflation, corruption, exploitation of savers by banks and distortion of the economy. During the deregulation era, the direct control instruments were retained in different forms and produced disastrous effects. The deficit financing by banks and CBN continued, the exchange rate and interest rate liberalisation was manoeuvred for corruption purposes, banking privatisation was captured by the political and ruling class, and the regulatory framework was made unstable and inconsistent for purely rent-seeking and kleptomaniac purposes. The third hypothesis is accepted.

During the financial deregulation programme, the government of the country was characterised by political instability, administrative fluidity, public office insecurity, tension and absence of political credibility. These factors facilitated the regulatory instability and confusion that engulfed the banking system. The autocratic nature of military regime that govern the country bequeaths financial deregulation with centralisation of authority, absence of checks and balances, sporadic regulation, policy inconsistencies, lack of credibility, and relegation of financial expertise.

The nature of military law making which vests the military Head of State with supreme legislative authority in personam ensures that financial legislation is bereft of deliberation, consultation and expert opinions. It is not surprising that the banking laws in such circumstances are personalised, widely discretionary, and grossly defective. A stable and credible political system with constitutional checks and balances and due parliamentary process would have provided crucial foundation for financial deregulation. The fourth hypothesis is therefore established.



## **11.5 Proposals for reform<sup>1213</sup>**

### **11.5.1 Background to reform proposals : Comparing the Old Order with the New Order**

A comparative insight into the pre-liberalisation financial regulatory regime in Nigeria and the present liberalisation regulatory era reveals certain common critical features of the two distinct eras. The two regimes are characterised by the following features :

- i. Legal norms that mandate unrestricted deficit financing by the CBN of the Nigerian government budget deficits.
- ii. Fiscal recklessness and unbridled deficit financing by the Nigerian government have always been responsible for persistent inflation and macroeconomic instability in the country.
- iii. Legal norms that subordinate the CBN to the direct authorities of the Head of State/President, and Finance Minister in monetary and banking matters.
- iv. Legal norms which vests final authority in all monetary and banking regulatory and policy decisions in the Head of State/President or the Federal Executive Council.
- v. The CBN has always lacked final and effective regulatory powers, and its officials also lack independence of action.
- vi. Financial regulation had/is still predominantly influenced by self-seeking and corruptive political considerations.
- vii. Financial regulation remains centralised, dictatorial, personalistic and excessively political.
- viii. Military regimes with omnipotent powers remain the decisive political structure.

<sup>1213</sup>. This section contains a number of suggestions for the reform of the identified critical problems of the Nigerian financial system. The suggested reforms are informed by a careful comparison of the pre-liberalisation era with the liberalisation regime which reveals some endemic problems in the Nigerian financial regulatory structure. Supplementary to the above, the proposed framework for reform is based on comparable solutions from international experiences of some developing countries, and the developed countries that have significantly influenced the Nigerian laws.

ix. There had been complete absence of judicial and parliamentary oversight over financial regulation in the country.

These characteristics are the common and constant factors of the banking interventionist era between 1968 and 1985, and the present banking deregulation era of 1986 till date.

It must be emphasised that some significant changes are noticeable between the two eras. The theoretical and technical framework of financial regulation in Nigeria changed from the classical interventionist to liberal regulatory regime. Specifically, the McKinnon-Shaw approach induced the movement of financial regulation from the control measures to liberal measures. Hence, liberalised foreign exchange rules have replaced exchange control laws, deregulated interest rates displaced the interest rate control rules, government-owned banks have been privatised, and banking entry is liberalised. Additionally, directed credit and restrictive foreign bank ownership rules have been scrapped, while banking operations witnessed some liberalisation. Thus, it has been rightly asserted that financial deregulation in Nigeria was "economic revolution"<sup>1214</sup>.

Despite these liberalising measures, some rules and institutions that determine the nature, content and characters of financial regulations, as well as their timing, sequence, implementation and execution remain constant, and their untoward existence undermine the financial deregulation programme. The economic revolution was not accompanied by political and legal revolution. The basic problem with the programme in Nigeria has been posited as misalignment of policies and the fact that policy measures were not adequately and efficiently executed. In this connection, the following reforms are suggested to change the identified common and deleterious features of the Nigerian banking and financial system.

<sup>1214</sup>. See Okigbo. (1993) *op. cit.*, p. 82.



## **11.6 Regulatory, Institutional and Political Reforms**

### **11.6.1 Delimitation of Central Bank Credit to Nigerian Government**

The Nigerian government has been shown to have a cavalier quest for central bank credit to cushion the perennial excessive fiscal deficit of the government. Yet, this financing method has serious inflationary repercussions that aggravate the macroeconomic instability of the country. A constitutional provision mandating a balanced budget has been advocated<sup>1215</sup> by some bankers. We submit that this may not be politically feasible<sup>1216</sup>, and the intellectual appropriateness of the suggestion has even been doubted<sup>1217</sup>. A better solution in our view to curb the inflationary bias of the Nigerian government is to restrain constitutionally or legally the central bank credit to the government.

The preferred course to us is a complete legal prohibition of all forms of central bank credit to the government except in case of war. This is the position in Chile, a country that experienced financial crises similar to the Nigerian saga. The Chilean Constitution<sup>1218</sup> prohibits overdraft on current account, fixed-term loans and advances to the government by the central bank. The said Constitution further prohibits purchase of government securities at both primary and secondary markets by the Chilean Central Bank.

<sup>1215</sup>. See Osa-Afiana, *op. cit.* p. 38. For the original proposition of legal or constitutional restraint of fiscal deficit, see Friedman, M., *A Program for Monetary Stability*, Fordham University Press, New York, (1960).

<sup>1216</sup>. The politicians may argue persuasively that such a constitutional provision would hinder the executive ability of a government to discharge its duties effectively by curbing its spending powers without corresponding limits on governmental services and functions.

<sup>1217</sup>. See Issing (1993), *op. cit.*, p. 45 where it is contended that economic theory has abandoned such notion of restraint.

<sup>1218</sup>. See 1979 Constitution. See also 1989 Central Bank Law ( Law No. 18840 published on October 10, 1989).

It is submitted that the historical financial and fiscal recklessness of succeeding Nigerian governments, and their unrepentant calamitous inflation bias with its attendant current macroeconomic instability and financial system disaster, compels the recommendation of a legal arrangement akin to the Chilean law. Hence, we suggest the abrogation of the present CBN laws that authorises central bank credit<sup>1219</sup> to the Nigerian government at negotiated rates<sup>1220</sup> and mandates the underwriting of the government securities by the CBN<sup>1221</sup>. The abrogation of these laws is not negotiable if the Nigerian financial crises and macroeconomic instability are ever going to be resolved. The second suggestion is a replacement of the abrogated laws with a new constitutional provision prohibiting CBN credit to the Nigerian government either in the form of overdraft or fixed term loans and advances or acquisition of government securities at primary and secondary markets. This prohibition may be enacted in the ordinary law although a constitutional provision is preferable.

Although, the above recommendation is our optimum choice, we advocate alternative legal provisions similar to the legal positions in USA<sup>1222</sup>, Venezuela<sup>1223</sup>, and Peru<sup>1224</sup>, which prohibit central bank overdraft and fixed term loans and advances to the their respective governments as well as purchase of government securities in primary market, but permit discretion to the central bank to acquire government securities on the secondary market. We suggest these legal arrangements as the second best for Nigeria,

<sup>1219</sup>. See S. 33 of CBN Decree No. 24 of 1991 as amended.

<sup>1220</sup>. S.33 (1) of CBN Decree No. 24 of 1991 as substituted by CBN ( Amendment ) Decree No. 3 of 1997.

<sup>1221</sup>. S. 27 (1) (g) of CBN Decree No. 24 of 1991 as amended. Equally, S. 34 of CBN Decree No. 24 of 1991 as amended should also be repealed to the extent (if any) that it requires financing by the CBN.

<sup>1222</sup>. See Federal Reserve Act of 1913 and its amendments.

<sup>1223</sup>. See Ley de Reforma Parcial de la Ley del Banco Central de Venezuela, published on December 4, 1992.

<sup>1224</sup>. See Ley Organica del Banco Central de Reserva del Peru, published on December 30, 1992.



and a third best option we recommend is a legal prohibition of overdraft and fixed term loans and advances to governments, but allows a discretionary purchase of government securities at both primary and secondary markets by the central bank. This is position in Argentina<sup>1225</sup>, Austria<sup>1226</sup>, Brazil<sup>1227</sup>, Japan<sup>1228</sup> and some newly emerging states<sup>1229</sup>.

A compelling fact is that most countries throughout the World now prohibit certain form of central bank credits to their governments. The pro-government credit in UK is sui-generis<sup>1230</sup>, and will change if Britain joins the EMU<sup>1231</sup>. Even then, the Bank of England credit to the British government is at market rate<sup>1232</sup> and not negotiated rates. This proposal of a legal restraint on CBN financing of the Nigerian government deficit is fundamental, and it has been emphasised that "in Nigerian circumstances the removal of the inflation tax would be the single most important restraint"<sup>1233</sup>.

#### **11.6.2 Independence and empowerment of the Central Bank of Nigeria**

The mere restraint of central bank credit to the government may however not absolve the central bank from intense political pressure. Indeed, the effectiveness of the credit restraint measures depends on "a set of rules guaranteeing central bank independence, including those affecting the central bank mandate; its financial

<sup>1225</sup>. See Carta Organica del Banco Central ( Ley 24. 144; October 1992 ).

<sup>1226</sup>. See Statute of the Austrian National Bank and National Bank Law, No. 184/1955, as amended by Federal Laws Nos. 200/1967 and 276/1969.

<sup>1227</sup>. See 1988 Constitution .

<sup>1228</sup>. See Finance Law and Bank of Japan Law.

<sup>1229</sup>. For examples Romania, Portugal and Slovak Republic.

<sup>1230</sup>. The arrangement is based on convention ,tradition and bilateral agreements.

<sup>1231</sup>. European Monetary Union. see Maastricht Treaty which restrains central bank credit to member states and prohibits overdraft on current account, fixed-term loans and advances, and purchase of securities on primary market .

<sup>1232</sup>. This applies by tradition.

<sup>1233</sup>. See Collier, op. cit., p. 336.

independence; the compositions, appointment; and duration in office of its managers; and the control on other policy instruments, such as the discount rate and reserve requirements"<sup>1234</sup>.

It is proposed that the 1991 CBN Decree as amended, be further amended to provide clearly for the independence of the CBN and its officers from the Nigerian government. In this respect, the appointment and removal of the officers of the CBN must be made subject to parliamentary control, and the security of tenure of their offices be granted. The autonomy of the CBN should be enacted into a law and made subject only to parliamentary control. Additional, the recent law that made the Finance Minister the supervisor of the regulatory and supervisory duties of the CBN is recommended for abrogation as anachronistic and untenable.

Indeed, neither the Federal Reserve System (FED) in USA nor the Bundesbank in Germany is subservient to its Treasury or Finance Ministry. The Treasury Secretary had been routed<sup>1235</sup> from the FED since 1935. Even , in UK, although the Bank of England is theoretically subordinate to the Treasury, in "practice, the Treasury and the Bank work in harmony and on a basis of effective equality"<sup>1236</sup>. Thus, the present subservience of the CBN to the Finance Ministry has no precedent in civilised financial world.

A supplementary recommendation to the earlier proposals is a legal provision stipulating the clear and unequivocal monetary and banking policy responsibilities of the CBN. The inflationary bias of the Nigerian government compels the attribution of monetary responsibility to an independent CBN which must be insulated by legal provisions from political pressure, and equipped with "considerable discretion in the

<sup>1234</sup>. Cottarelli, Carlos., Limiting Central Bank Credit to the Government : Theory and Practice, ( IMF. Washington D.C., Occasional Paper, December 1993 ) p. 4.

<sup>1235</sup>. See Banking Act of 1935.

<sup>1236</sup>. See E.P. Ellinger and E. Lomnicka, Modern Banking Law. Clarendon Press : Oxford. 2nd ed..(1994) p. 30.



determination and operation of monetary policy"<sup>1237</sup>. It is therefore suggested that the current legal provision which makes the Nigerian President or Head of State the final authority in respect of monetary and banking policy be abolished. Neither experience nor merit supports the provision. A replacement law that endows the CBN with final authority for the formulation and implementation of monetary and banking policy subject to parliamentary control be enacted. The proposed law should accord the CBN with a clear mandate to reach price stability, and holds the central bank managers strictly accountable for their actions and inaction.

We endorse a provision similar to the New Zealand provision<sup>1238</sup> under which the central bank Governor is required at the beginning of his appointment to indicate to the parliament the monetary policy and targets he intends to pursue and attain during the duration of his term of office, and the attainment or otherwise of the monetary target is used as the yardstick to measure the performance of the central bank. The Federal Reserve System in USA has independent monetary responsibility subject to Congressional control, and most recently even the UK has embraced the move for an independent central bank with the relinquishment of monetary responsibility by the Treasury to the Bank of England<sup>1239</sup>. South Africa<sup>1240</sup> also has an independent central bank. The current Nigerian monetary policy practice has no precedent in the jurisdictions that most influenced its existence.

<sup>1237</sup>. See Swinburne, Mark. and Marta Castello-Branco, " Central Bank Independence and Central Bank Functions ", in Patrick Downes and Reza Vaez-Zadeh (eds.). *The Evolving Role of Central Banks*, IMF, Washington D.C.,(1991) p. 418.

<sup>1238</sup>. See Issing (1993), *op. cit.*, p. 44.

<sup>1239</sup>. See Bank of England Act Chapter 11 of 1998.

<sup>1240</sup>. See J. Leape, "Independence and Accountability: the Role and Structure of the South African Reserve Bank", *LSE CREFSA Q. Rev.*, Jan. 1995. p. 2.

### **11.6.3 Deregulation of the CBN and NDIC from Political Interventions and Controls**

The greatest problems confronting the CBN and to an extent the NDIC are the politicisation of their functions, and their complete powerlessness regarding their core banking regulatory and supervisory responsibilities. Since the politicisation and the impotence of these regulatory agencies are legal realities, similar countervailing legal actions are required to rectify the regulatory and political anomalies.

It is submitted that all the legal provisions contained in both 1991 CBN Decree and 1991 BOFID, to the particular extent that they mandate presidential approvals for routine banking regulatory and supervisory duties, or vest in the President banking regulatory discretion are irrelevant, unnecessary, corruptive, and lacking any rational, technical, or functional utility except personal aggrandisement and political empowerment of the Nigerian President. This assertion applies with equal force to all the provisions in 1997 CBN Decree, 1997 BOFID Decree and the NDIC Decree as amended by 1997 NDIC Decree, to the same extent that they prescribe ministerial approvals for certain routine banking regulatory and supervisory duties of the CBN and the NDIC. Indeed, the otiose nature of the ministerial approvals is revealed by the fact that such approvals had been previously abrogated<sup>1241</sup> and out of use since 1991 with favourable effects until the clamour for powers by the present Finance Minister, Chief M. Ani.

The facts that the Bank of England enjoys complete autonomy in respect of its banking regulatory and supervisory functions<sup>1242</sup> which have been transferred to the Financial Service Authority<sup>1243</sup> (FSA), and that both the FED and FDIC are unencumbered<sup>1244</sup> with irrational presidential or ministerial authorisations in respect of

<sup>1241</sup>. See CBN Decree No. 24 of 1991 before the 1997 amendment.

<sup>1242</sup>. See Banking Act of 1987.

<sup>1243</sup>. The Bank of England's regulatory and supervisory functions in respect of banks are now vested in Financial Service Authority. See Bank of England Act Chapter 11 of 1998.

<sup>1244</sup>. See Scott, Hal. S. and Wellons, Philip. A., International Finance, Transactions, Policy, And Regulation, The Foundation Press, Inc. Westbury, New York, 3rd edition,(1996).



their banking duties, suggest that such requirements in Nigeria serve no technical and functional purposes than political corruption. Indeed, the mandated presidential approvals have not prevented financial crises and sporadic failure of banks in the country, hence could not be regarded as safeguards or safety nets. In fact, the presidential approvals have had the effects of permitting the pollution of the Nigerian financial system by dubious generals and politicians masquerading as bankers, and terminally ill banks surviving on generous subsidies.

A fundamental objection against the centralisation of monetary and banking decision making powers in the Nigerian military Head of State, is its nauseating effect of investing such policies with utter mediocrity and ghastly incompetence. The military ruler ship in Nigeria has been characterised by economic and political ignorance. Indeed, most Nigerian and African military dictators have been described as "the proven idiots of our post-colonial experience"<sup>1245</sup>. Yet, the most fundamental economic policies of the country lie solely in the hands of these unqualified persons "who, against all natural laws, appear to rise to the top"<sup>1246</sup>. It should not be surprising the end-products of such ill-conceived policies as in Nigeria are calamitous.

Additionally, since neither the President of USA, nor the Prime Minister of UK enjoys similar presidential nor executive approvals over banking matters, the Nigerian situation becomes suspect since the approvals have nothing to do with the powers and privileges of the Headship of a State or Government. Indeed, the Nigerian President has neither the powers nor prestige of the President of USA or Prime Minister of UK, who exercises no presidential or ministerial approvals over their respective financial systems.

<sup>1245</sup>. See Soyinka, Wole., *The Open Sore Of A Continent : A Personal Narrative of the Nigerian Crisis*. Oxford University Press, New York.(1996). p. 139.

<sup>1246</sup>. Loc. cit.

The direct involvement of the Nigerian Head of State in such extraneous issues signifies his remarkable indolence, and undemanding state duties.

The immediate abrogation of all presidential and ministerial approvals, statutorily required under the 1991 CBN Decree, 1991 BOFID Decree, 1988 NDIC Decree, and their 1997 amendments, is recommended as crucial legal pre-condition to a successful financial reform programme in Nigeria. It has been rightly observed that "the CBN should be deregulated. If the CBN, the regulator, is not deregulated then all the deregulation is half measure and regimented"<sup>1247</sup>.

#### **11.6.4 New Political Structure: A Necessity**

Perhaps, it must be stated from onset that most of our proposals above may, and indeed, could be implemented by a willing and honest military government save that where parliamentary oversight is recommended, the powers for the oversight be vested in the ruling government's highest decision making collegiate body such as PRC in Nigeria. However, since the proposals involve the divestiture of many presidential powers, it is most doubtful that a military Head of State will take such delimiting legislative steps. Thus, the proposals are only feasible insofar as they provide legal and regulatory frameworks that a military government may bequeath its democratic successor or may be adopted by a democratic government in Nigeria. Thus, a democratic government is crucial to our proposal for financial reforms in Nigeria.

The intellectual community appears divided as to the ability of democratic politics to institute economic reforms due to the large predominance of redistribution relative to efficiency gains. Yet in recent times, the most successful reforming states are democratic societies<sup>1248</sup>. Indeed, recent studies have found a correlation between democratic

<sup>1247</sup>. See Akin Disu, " Questions And Comments " in *The Challenges & Management Of Change In The Nigerian Financial System* , Papers and Proceedings of 1993 Workshop for Bank Directors. (Financial Institutions Training Centre, Lagos, Nigeria, 1993) p. 13.

<sup>1248</sup>. For examples USA, UK., Chile, Argentina, and Ghana.



government permitting civil liberties and positive government performances on one hand, and authoritarian governments suppressing liberties and poor government performances on the other<sup>1249</sup>. It has been asserted based on rigorous study that increasing citizen voice and public accountability through both participation and better governance can lead to greater efficacy in government action<sup>1250</sup>.

The case for democracy as a fundamental condition for viable financial and economic reforms in Nigeria is made here on pragmatic grounds. The nature of the military government, its command structure, absolutism, and centralisation of powers are antithetical to financial deregulation which preaches decentralisation of economic powers, freedom of choice for economic agents, and independence of regulators. The military structure abhors independence to any organ even judiciary in Nigeria. The decentralisation of powers runs counter to the very base of military hegemony.

Furthermore, the executive lawlessness, absence of restraints and complete disregard for legal norms that marked military governance in Nigeria deny such government any credibility that its financial regulations and policies would be respected even by the government itself. The usual exclusion clauses<sup>1251</sup> which abrogate rights to judicial remedies in a court of law against military government's actions mean that abusive regulatory acts cannot be contested, and the rampant disobedience of court orders by military rulers and their agencies confirms that even when judicial access is available, enforcement action against military government is generally difficult<sup>1252</sup>. The remarkable

<sup>1249</sup>. See Isham, J. Kaufman, D. and Pritchett, L. H., " Civil Liberties, Democracy, and the Performance of Government Projects " (1997) The World Bank Economic Review, Vol. 11, No. 2, 219 at 237. see also Arup Banerji and Hafez Ghanem, " Does the Type of Political Regime Matter for Trade and Labor Market Policies" ( 1997 ) The World Bank Economic Review, Vol. 11, No. 1, 171 at 188.

<sup>1250</sup>. See Isham et al, Ibid. p. 237.

<sup>1251</sup>. See for example S. 1 (2) (b) of The Federal Military Government ( Supremacy and Enforcement of Powers ) Decree 1984.

<sup>1252</sup>. See Suit No. M/348/90 of 19/2/91. Gloria Mowarin V. Nigerian Army and ors.

ease of lawmaking procedure and the personalisation of the lawmaking powers<sup>1253</sup> in the President of Head of State indicates that financial regulations and policies would be fluid, personalistic, inchoate and unstable. This is further complicated by the provision that the mere oral pronouncement of the military Head of State is law<sup>1254</sup>.

These characteristics of the military governments conflict markedly with a deregulated financial market that requires carefully structured checks and balances to work in a harmonious way. Hence, it has been argued most appropriately by the late professor of economics, Carlos Diaz Alejandro that the requirements of parliamentary oversights over regulatory agencies and the existence of checks and balances made "...democracy, whatever its more fundamental virtues,..an important technical input for healthy domestic financial system "<sup>1255</sup>.

With particular reference to Nigeria, the point has been underscored that an independent central bank cannot act as an agent of restraint on a Nigerian military government, and emphasising that without "a trusted democracy with demonstrable defences for those who defy the wishes of the government, it is difficult to imagine a central bank governor refusing the wishes of a president and surviving"<sup>1256</sup>. This is one salient reason that democracy is a crucial underpinning to financial reform in Nigeria. A leading Nigerian economist also contends that in the absence of clear democratic choice, "there is a strong temptation to convert the State into personal property with its attendant consequences in the absence of public accountability, in the growth of monumental corruption and in a decay of moral values"<sup>1257</sup>.

<sup>1253</sup>. See Nwabueze, B.O., *Military Rule And Constitutionalism in Nigeria*, Spectrum Law Publishing . Lagos, (1992), p. 7.

<sup>1254</sup>. See Decree No. 104 of 1993.

<sup>1255</sup>. See Diaz- Alejandro, *op. cit.*, p. 380.

<sup>1256</sup>. See Collier Paul, " Living Down The Past : Redesigning Nigerian Institutions For Economic Growth " (1996) 95 *African Affairs* No. 380, 325 at 332.

<sup>1257</sup>. See Okigbo, *Essays in the Public Philosophy of Development*. Vol.3 *op. cit* p. 278.



We recommend democracy as technical input to financial reform in Nigeria. No other form of government is conducive to inviolate private activity, free enterprise, personal liberty, economic prosperity and the governance of large educated groups<sup>1258</sup>, than democracy with active parliamentary and judicial oversights. The lesson of the failure of military regime in Nigeria according to Professor Nwabueze, is "that there is no really viable alternative to a government freely elected by the people and limited in its powers by a supreme constitution"<sup>1259</sup>. The contrary evidence often cited in respect of financial liberalisation in Ghana under the military regime of Rawlings, and the authoritarian states of South East Asia can be distinguished<sup>1260</sup>.

In the final analysis, we conclude as did, Sir Daldry, in 1965 that "the future of the banks like that of Nigeria depends on the maintenance and exhibition to the World of sensible and democratic political policies ....."<sup>1261</sup>.

### **11.7 Reforms of the Banking and Related Legislation : A Summary**

This section contains the summary of the reform proposals that have been suggested in respect of the defects in the banking and related laws. The reforms are :

<sup>1258</sup>. See Galbraith, J. K., *The Good Society. The Humane Agenda*, Sinclair-Stevenson, Great Britain, (1996) p. 72. See also Richard Posner, *op. cit.*, p. 25.

<sup>1259</sup>. See Nwabueze, *op. cit.* p. 330.

<sup>1260</sup>. The military regime in Ghana under Rawlings had a near platonic leadership since Flt. Lt. Rawlings was the first and still the only military Head of State in sub-Sahara Africa with university education at the time of accession to the State Headship. Furthermore, Rawlings was not a foot-soldier like his other military dictators in the area. he was an air officer with flair for science and technology. Perhaps, these qualities marked Rawlings apart. With respect to South East Asian states, one important feature is noticeable. The absolute concentration of political and economic powers in one single individual as obtained under military regimes in Africa, has been absent in South Korea, Singapore, Malaysia, and Taiwan. These countries have always had decentralised political systems with Presidents and Prime ministers.

<sup>1261</sup>. See Sir Leonard Daldry, "Nigeria" in Crick, W. F. (ed.), *Commonwealth Banking Systems*, Clarendon Press, Oxford, (1965), p. 362.

1. The enactment of a provision mandating the co-ordination of regulatory actions between the CBN and the NDIC.
2. The enactment of a provision specifying the clear circumstances for regulatory actions of liquidation, conservation, and rehabilitation of failing banks by regulatory agencies, and equipping such agencies with necessary powers and duties in this respect.
3. An amendment to the banking law specifying the time limit for the liquidation or sale of an assumed or acquired bank.
4. The enactment of a provision prohibiting banks from granting loans to, or investing in securities underwritten by their subsidiaries, or granting loans on the security of such subsidiaries' shares. Alternatively, the provision may require that a parent bank's loans to, or investment in, its subsidiaries, be deducted from the parent bank's capital.
5. The enactment of a mandatory 'fit and proper' person test to be satisfied by prospective bank owners, managers, and controllers.
6. The enactment of a provision that "at least two individuals effectively direct the business of a banking corporation". The non-observance of this provision should be a ground for the revocation of a bank licence.
7. An amendment to the banking laws extending the permissible scope of banking activities in Nigeria, to include banking activities regarded as traditional under the EU Second Banking Directive.
8. With respect to No. 7 proposal, the necessary safety rules, firewall provisions and capital adequacy requirements must be enacted to minimise the associated risks.
9. An amendment to the banking law or policy which will permit Nigerian banks to hold first rated foreign assets to minimise risk concentration of assets, and enhance profitability.
10. An amendment to the banking law defining the term representative office, its permitted activities and the grant of right of examination of such office to the CBN.
11. Incorporation to the banking law, of a right of judicial review in a court of law by aggrieved banks or persons against the decision of the financial regulators.



12. An amendment restoring high level of financial competence as qualification for the posts of chairman, governor and directors of CBN and NDIC. The chairmanship and directorship should be on full-time basis.

13. The enactment of a provision mandating public information disclosure in a newspaper by the CBN of the financial condition of each bank in the country. The disclosure should be made three times in a year, stating the CBN's opinion on the state of affairs of each bank.

14. The enactment of a provision permitting private credit rating of banks by at least two private appraisers.

15. The enactment of a provision granting the court of law the power to reopen extortionate credit or loan agreements , and do justice between the parties.

16. The promulgation of a competition or anti-trust law.

17. An amendment to the Money Laundering Decree abolishing the prohibition of certain cash transactions.

18. An amendment to the Money Laundering Decree requiring NDLEA to have reasonable suspicion before conducting investigation or surveillance on a bank account, and further mandating a prior court order for stoppage or blockage of a suspect's bank account.

### **11.8 Curbing Human Factors: Some Suggestions**

The role of human factor in bank failure in Nigeria has been underscored. The human factor lies in abusive insiders, corrupt supervisors and fraudulent customers. Attempts must be made to curb the human factor. Banking sector has a very high propensity to criminal activities. As Long observes "Finance is clearly a sector to which crooks gravitate. It is a convenient place to commit white collar crimes. Countries need a legal system and a regulatory framework to oversee financiers to prevent banking fraud"<sup>1262</sup>.

<sup>1262</sup>. Long. Millard., "Financial Reforms: A Global Perspective" in Shakil Faruqi(ed.). op. cit. p. 64.

Measures to curb human factor must address the political, institutional and regulatory dynamics of human factor. Human factor in banking has been greatly facilitated by political corruption, favouritism and inaction which ensure that banking criminals with political influence are shielded from arrest and prosecution. This protection is effective because all the agencies responsible for the arrest and prosecution of banking criminals are under direct political control which influences their actions and inactions.

Indeed an example may be cited to illustrate the role of politics in promotion of human factor. The former managing director of Royal Merchant Bank, Mr Henry Imasekha was being investigated for financial misconduct by the Failed Bank Inquiry branch of the police<sup>1263</sup>. The managing director of Nigerian Deposit Insurance Corporation (NDIC), Mr John Ebhodaghe allegedly wrote to the police in respect of the investigation of Mr Imasekha that "I have instructions to request you to stop further investigation.... until further notice"<sup>1264</sup>. The police refused this request and a high ranking superintendent was sent to effect the arrest of Mr Imasekha. Suffice to say that the superintendent was not only prevented from effecting the arrest but he (the superintendent) was arrested himself on the order of the Chief Security Officer to the then Head of State, General Abacha.

The CBN, NDIC, Nigeria Police Force and Federal Ministry of Justice report directly to the Presidency. It is our view that if the recommended de politicisation and reforms of CBN and NDIC are implemented, the political undercurrents of human factor will be minimised. The CBN and NDIC may be able to instigate direct action against criminals without recourse to the political authorities.

The institutional underpinnings of human factor lie in the gross inadequacy, corruption and inefficiency of Nigeria Police Force that is responsible for the investigation

<sup>1263</sup>. See Tell, Nigerian Magazine of 21/9/98 No. 38. pp. 19 - 22.

<sup>1264</sup>. Ibid p. 19.



and apprehension of criminals. Professor Akanle, a former Director General of the Federal Ministry of Justice asserts :

Bank frauds and banking malpractices generally are highly technical and sophisticated. Without impugning our police force, investigation and prosecution of banking malpractices are not jobs for a Police officer whose basic *educational background* is a West African School Certificate<sup>1265</sup> or even less. Again, the investigation of such activities requires expert knowledge of banking, accounting and other related disciplines. Furthermore, the police lack the necessary gadgets and logistics to respond to the demands of this important sector<sup>1266</sup>.

Although a special branch called Failed Bank Inquiry was established for dealing with banking fraud, the institutional drawbacks of the Police Force permeate the whole system. The result is that banking criminals can predict with a degree of certainty that crimes will neither be detected nor will they be prosecuted and punished. A suggestion to minimise this problem of adequate policing is the creation of an Office for Special Fraud (OSF) which will be staffed with adequately qualified, specially trained, well remunerated and credible investigators and lawyers to investigate and prosecute banking criminals.

The SOF should be independent, financially autonomous, and reports directly to the parliament. The CBN, NDIC, banks, and other financial institutions must have a mandatory duty of disclosure of financial fraud to the OSF. The OSF should also have a mandatory duty of prosecuting banking fraud and aggrieved persons should be empowered to apply to the Court for an order compelling SOF to prosecute in cases where they are personally affected or public interest issue is at stake.

The regulatory incentive of human factor which may be located in the gross inadequacy of penalty for banking crimes is best exemplified by the case of Lord Chief

<sup>1265</sup>. This is equivalent to GCE 'O' Level in UK.

<sup>1266</sup>. See Akanle, Oluwole.. " Legal and Institutional Framework for the Control and Prevention of Crime in the Banking Industry" in Ajibola, Bola and Kalu, Awa. U., (eds.). *Banking and Other Financial Malpractices in Nigeria*. Federal Ministry of Justice, Lagos (1990), p. 11.

Ifegwu and Others VS. Federal Republic of Nigeria<sup>1267</sup> where banking criminals who stole the sum of US \$2, 962, 062.89 (Two million, nine hundred and sixty-two thousand Dollars, eighty-nine cents equivalent to N242,889,156.98 (Two hundred and forty-two million, eight hundred and eighty-nine thousand, one hundred and fifty-six Naira, ninety-eight kobo) were given a fine of the paltry sum of N100,000.00 (One hundred thousand Naira) or 2 years each under section 18 of BOFID. This sentence of fine is alarming considering the gravity and sum involved in the crime. The BOFID and CBN Decrees should be amended so that punishment will fit the crime. It is submitted that fines of fixed sums should be replaced with scale of fines with graduated punishment and higher tariffs according to the gravity of the crime. Mandatory prison sentences without options of fine for banking fraud above specified threshold should also be enacted.

A most radical suggestion will be a legislation which grants a right of private prosecution of banking criminals to affected banks, customers and persons, and a right of civil prosecution with treble damages to customers and persons affected by banking crimes against both the criminal and the bank. These measures will provide alternative remedies to the present government/public only approach to mitigating banking crimes. The creation of a Banking Ombudsman may also be useful in this respect.

Additionally, this work has highlighted the problem of credibility that now affects the Failed Bank Tribunal that deals with civil and criminal cases concerning failed and failing banks. It is submitted that in order to restore the credibility of the Tribunal and its judicial integrity the following measures should be implemented. First, the Failed Bank Tribunal should be removed from the direct control of the Presidency. The Chief Justice of the Federation should be the proper overseer of the Tribunal. Second, the appointment of judges of the Tribunal and its appellate body should be from the core of serving judges with impeccable record. Third, a time limit for the arrest, detention and prosecution of

<sup>1267</sup>. Supra.



suspects should be enacted. The present situation under which about 250 persons are in detention and in some cases for more than three years without trial<sup>1268</sup> is a mockery of criminal justice.

Perhaps an area that requires very urgent attention is the recovery of bank debts from defaulting customers. The law at present only addresses the recovery of debts owed to failed banks. It appears to have ignored the recovery of debts owed to other banks and financial institutions and the attendant effects of non-recovery of such debts. We recommend in this respect the establishment of special tribunals that will deal with recovery of bank debts. These special tribunals have been established recently in India<sup>1269</sup> and Sri Lanka<sup>1270</sup> to curb the phenomenal rise in bad performing loans and unproductive assets of banks and financial institutions due to defaulting borrowers<sup>1271</sup>.

The solution to human factor in Nigeria inevitably has an international dimension because of the trend among suspected bank criminals of absconding from the country to escape<sup>1272</sup> from investigation, possible prosecution and punishment. It is essential to stem the tide of escaping criminals that efforts be made to extradite some of the fugitives from foreign countries. This will require massive diplomatic and legal efforts in cases of foreign countries that have extradition Treaties with Nigeria, however, in cases where there are no Treaties, it may be necessary to enter into such Treaties.

<sup>1268</sup>. See Tell, Nigerian Magazine of 21/9/98 op. cit p. 22.

<sup>1269</sup>. See The Recovery of Debts Due To Banks & Financial Institutions Act 1993 (India).

<sup>1270</sup>. See The Debt Recovery (Special Provisions) Act No.2 of 1990 (Sri Lanka).

<sup>1271</sup>. See Abeyratne, Sonali. G., Banking And Debt Recovery: A Comparative Study of the Law and Practice In India, Sri Lanka and Malaysia, Ph.D Thesis, London School of Economics and Political Science, University of London,(1998).

<sup>1272</sup>. See Tell, Nigerian Magazine of Nov. 2,1998, No.44, pp. 25 -29.

## 11.9 Implementation of Reform Proposals: A Comment

A menu of reform proposals has been suggested in this Thesis. The proposals that are central to this work consist of delimitation of government borrowings, and independence, de politicisation and empowerment of the CBN and the NDIC. The other suggested amendments to the banking laws are, however, crucial for an integrative and effective financial reform and a political reform is fundamental for a sustainable reform. We suggest a holistic reformative approach.

Our model of financial regulation is a framework that is exclusively concerned with issues regarding the safety and security of depositors, institutions and the financial system. As Llewellyn rightly submits "If social objectives are set these should be pursued through means other than financial regulation for this is difficult enough in itself without encumbering it with objectives it is unsuited to attain"<sup>1273</sup>

The question, however, arises regarding the feasibility and practicability of the proposals. It is our view that the proposals are feasible and practical insofar as they are based on approaches in countries which laws have influenced legal developments in Nigeria and other countries at similar stages of development. Indeed, "regulation in the financial system cannot now be regarded as exclusively a national issue, with national regulatory arrangements framed without any reference to those in other major financial centres"<sup>1274</sup>.

International legal regimes have also offered useful guidance on reform proposals. We advocate the Second Banking Directive of the European Union as a model for universal banking or banking desegmentation in Nigeria. The Investment Services Directive<sup>1275</sup> of the European Union concerning investment services may also be adopted

<sup>1273</sup>. See Llewellyn. D.T., op. cit. p. 71.

<sup>1274</sup>. Ibid. p. 46.

<sup>1275</sup>. See Council Directive 93/22/EEC of May 10, 1993 on Investment Services in the Securities Field, 1993 O.J.(L 141/27).



in respect of banking conglomerates and finance companies. The provisions of the directive regarding scope of activities, fitness rule, capitalisation, operating conditions and protection of customers and third parties will provide a useful framework for designing effective regulations for banks and other financial institutions dealing in investment services. The directive is specially relevant in view of the magnitude of failure affecting other financial institutions and community banks.

The Basle Committee on Banking Supervision's recommendation on Capital Adequacy Standard (Basle Accord) influenced Capital Adequacy Standard of the Nigerian banking system. Most recently, the Basle Committee<sup>1276</sup> on Banking Supervision recommended core principles for effective banking supervision that are to be adopted by member states as "minimum requirements"<sup>1277</sup>. The provisions of Basle Committee on "Core Principles For Effective Banking Supervision" provide a useful framework for financial reform. The core principles consist of 25 (twenty-five) principles which in the main concern preconditions for effective banking supervision, licensing and structure, methods of ongoing banking supervision, capital adequacy requirements and information requirements<sup>1278</sup>.

The Basle Committee's core principles<sup>1279</sup> have parallel recommendations with this Thesis regarding independence and empowerment of regulators, 'four eyes' test and fit and proper test. However, there are marked differences in the two separate recommendations

<sup>1276</sup>. The Basle Committee on Banking Supervision is a Committee of banking supervisory authorities which was established by the central bank Governors of the Group of Ten countries in 1975. It usually meets at the Bank for International Settlements in Basle, where its permanent Secretariat is located.

<sup>1277</sup>. See Basle Committee on Banking Supervision, Notes for editors on Core Principles of effective banking supervision, April 1997, p. 2.

<sup>1278</sup>. See Core Principles For Effective Banking Supervision, Consultative paper issued by the Basle Committee on Banking Supervision, Basle, April 1997.

<sup>1279</sup>. The recent interest by Basle Committee and the international community in setting comprehensive banking standard has been traced to the idea of International Banking Standard mooted by Morris Goldstein. See Goldstein, Morris., The Case for an International Banking Standard, Institute for International Economics, Washington, D.C., (1997).

in some areas. The Basle Committee recommended extensive principles concerning operating plan, internal organisation, market risk, interest rate risk, liquidity risk, capital adequacy, risk management, ongoing examination, banking acquisition and cross border banking<sup>1280</sup>. The banking reforms in Nigeria will benefit tremendously by adopting the core principles in these areas in respect of which this Thesis did not contain recommendations.

This Thesis however contains specific recommendations to mitigate the effects of macro-economic destabilisation of banking system, politicisation of banking regulation and supervision, political and personal corruption, negative human factor, absence of financial information, abusive interlocking ownership, absence of competition and inadequate protection of customers. Additionally, this Thesis underscores the role of the judiciary in banking reforms. The Basle Committee's core principles did not contain any recommendation in respect of these issues at all. It seems in these areas this Thesis offers useful guidance to Nigeria and other countries plagued by similar problems.

The importance of these issues in banking reforms cannot be over emphasised in view of recent developments in South East Asia and Russia. Indeed a comparison of the Nigerian banking crisis with the banking crises in South East Asia reveals some identical underlying factors. The Indonesian banking crisis<sup>1281</sup> owed much to the legendary corruption of General Suharto and his cronies, politicisation of banking supervision, episodic crisis, and inadequate regulations. The Japanese banking system was characterised by defective banking laws, regulatory inaction, repressive measures, insider abuse and political intransigence. An executive director of Bank of Japan, Tadayo Homma confesses that " There must be problems in the way the Ministry of Finance and Bank of

<sup>1280</sup>. See Sections III, IV and VI. *ibid*.

<sup>1281</sup>. See IMF Survey, Nov. 17, 1997 Vol. 26 No. 21. p. 354; see also The Express, Wednesday May 20, 1998 p. 25.



Japan conduct inspections"<sup>1282</sup>. Japan has now embarked on comprehensive financial legislation<sup>1283</sup> with a promise of tremendous reforms.

The banking problems in South Korea<sup>1284</sup> also reflect inadequate banking laws, repressive banking regulations, corruption, regulatory inaction and inside abuse. The same characteristics marked the banking crisis in Russia<sup>1285</sup> that is plagued by massive corruption<sup>1286</sup>, defective banking laws, insider abuses, politicisation of banking regulation and supervision, Mafia gangsters, episodic crisis and grave political instability signified by frequent change of government<sup>1287</sup>. Indeed the IMF managing director, Michel Camdessus has concluded that "many of the problems that lie at the heart of Asia's difficulties are bound up with poor governance"<sup>1288</sup>. The parallel nature of the causes of banking crises in South East Asia, Russia and Nigeria makes the analysis and recommendations of this Thesis apposite to comprehensive banking reforms in those countries.

A major issue with our reform proposals concerns its implementation. The fact that most of the reform proposals will divest the political authorities of their powers, control and rents may act as a disincentive for the implementation of reform. The leading financial sector expert at the World Bank, Millard Long has correctly asserted that the reason ".....it is so hard to get financial reform going is that finance is so close to the political

<sup>1282</sup>. See Financial Times, Wednesday Nov. 26, 1997, p. 8.

<sup>1283</sup>. See Katayama, Tatsu and Makov, Richard., "Deregulation of Financial Markets in Japan", [1998] International Journal of Banking Law, p.128.

<sup>1284</sup>. See Financial Times, Wednesday Nov. 26, 1997, p. 8.

<sup>1285</sup>. See IMF Survey, February 23, 1998, Vol.27, No. 4 . p. 49.

<sup>1286</sup>. See World Bank Policy And Research Bulletin, Oct.-Dec.1997, Vol.8, No. 4, p. 4.

<sup>1287</sup>. The seriousness of governmental instability in Russia has such a point that President Boris Yeltsin agreed recently to a curb on his constitutional power to dismiss the cabinet. He undertakes to consult the parliament and cabinet before exercising such power in future. See BBC Teletext Service, 6/2/99, p. 142.

<sup>1288</sup>. See IMF Survey, February 9, 1998, Vol. 27, No. 3, p. 37.

process. Every government has skeletons in its closet: things they have done with finance to favour political friends. They understand that looking too closely at the banks and the banks' portfolio will reveal these things, so they prefer not to undertake reform"<sup>1289</sup>.

This problem of lack of incentive may, however, be overcome or mitigated by the following factors:

- a) The current prolonged economic and political crisis which threatens the stability of Nigerian state may force the government to undertake reform.
- b) The massive failure of banks and other financial institutions with the attendant effects on the financial system and economy may coerce the government into further fire-fighting reform measures.
- c) The international creditors, IMF and World Bank may exert considerable leverage on the Nigerian government to undertake reform before any financial assistance will be forthcoming.
- d) The need to implement the Basle Committee's recommended 'Core Principle For Effective Effective Banking Supervision' to ensure the compliance of Nigerian banking law with international standard.
- e) The quest for reform by CBN and NDIC officials, Chartered Institute of Bankers of Nigeria (CIBN), depositors, Non-Governmental Organisations (NGOs), Opposition politicians and intellectual community may act as impetus for reform.

It seems the IMF and World Bank represent the most potent force that may pressurise the Nigerian government into undertaking reforms. Indeed, some of the present economic measures of the Nigerian government are allegedly influenced by the IMF<sup>1290</sup>. In this respect, our proposed reforms (excluding democracy) or similar ones may be recommended by the IMF and World Bank to the Nigerian government. The reform

<sup>1289</sup>. See Llewellyn, *op. cit.*, p. 63.

<sup>1290</sup>. See *The Guardian On Sunday*, Nigerian Newspaper, January 3, 1999, p. 12.



proposals comply with the IMF and World Bank Treaties and the recent IMF Code of Good Practices on Fiscal Transparency<sup>1291</sup>.

#### **11.10 The Theory of Financial Liberalisation : Some Lessons from the Nigerian Experience**

It is widely accepted<sup>1292</sup> that the main intellectual influence of the recent waves of financial reforms in many developing countries is the Mckinnon-Shaw theory of financial liberalisation which has been adopted and prescribed by the international financial institutions, the IMF and World Bank in particular<sup>1293</sup>. The theory forms the core intellectual and conceptual paradigm of this work. We have analysed and examined it in the light of the practical realities of the Nigerian financial system, and economy. A fundamental observation is that the theory's basic diagnoses of the critical problems of financial systems in third world countries, and the consequences of such problems on the countries' economies bear close resemblance to the pre-reform Nigerian financial system and economy.

The essential hallmark of the theory of financial liberalisation lies however not in locating the problems, but in proposing credible and viable solutions to the financial quagmire of most developing countries. Perhaps, with respect to Nigeria, it may be highlighted that the theory's catalogue of solutions as remedies for repressive financial systems, offer nothing new to the country since an array of international economic reports<sup>1294</sup>, commissioned works<sup>1295</sup>, intellectual treatise<sup>1296</sup> and review committees<sup>1297</sup>

<sup>1291</sup>. See Interim Committee of the Board of Governors of the International Monetary Fund: Code of Good Practices on Fiscal Transparency- Declaration on Principles of April 16, 1998. (1998) 37 I.L.M.942.

<sup>1292</sup>. See Fry, Maxwell. J..(1991) op. cit. p. 341.

<sup>1293</sup>. Ibid. p. 245. See also Sikorski. op. cit. p. 91.

<sup>1294</sup>. See The Economic Development Of Nigeria, IBRD. op. cit., p. 354.

<sup>1295</sup>. See Jucker-Fleetwood. op. cit., pp. 266-267.

<sup>1296</sup>. See Agu, op. cit., p. 167., Olashore, op. cit., p. 116; Okigbo. Essays. op. cit., p. 235.

had as far back as 1954 and early 1960s, recommended similar reform measures to successive Nigerian governments which characteristically refused to heed such recommendations. Thus, most financial liberalisation measures are rational and pragmatic solutions which devoid of intellectual hostility and dogmatism, compel careful examination and application.

The Nigerian experience of financial deregulation however reveals that the Mckinnon-Shaw theory of financial liberalisation suffers from two apparent defects that we called legal and political imbalances. The theory although abhors government's irrational interventions, appears to assume that the government will honestly embraced financial reforms and implement measures faithfully. It was an idealised vision of the government reforming efforts, and voluntary renunciation of fiscal and financial recklessness. It also seems to have assumed the creation or existence of appropriately equipped, legally efficient and politically independent regulatory and supervisory agencies.

Furthermore, while the theory recognises the personal and political rent seeking that underlines regulatory interventionism and control, it appears to have discountenanced its strength of continuity, which may undermine financial liberalisation, and thus failed to provide a framework for viable political and legal mechanisms that would neutralise or minimise such political externalities. With benefit of hindsight, the Mckinnon-Shaw theory, fails to underscore the importance of true democracy in politically unstable societies, to provide the necessary parliamentary and judicial checks and balances, and politically stable and credible polity, conducive to a liberalised financial market.

These apparent failures of the theory made it vulnerable to elasticity of political and legal surprises, and dented its potency. Indeed, the Mckinnon-Shaw theory recognises the role of fiscal viability and macroeconomic stability to financial liberalisation, and the

<sup>1297</sup>. See the White Paper on the Okigbo Financial System Review Committee of 1976; the decisions of the Federal Executive Council on the McKenzie Report of 1977; and the White Paper on the Onosode Commission on Parastatals of 1981.



presence of galloping inflation in most developing countries, but did not propose the legal restraint of central bank borrowing by the government. Neither did it underscore the independence of the central bank and financial regulators as essential conditionalities to successful financial reforms, nor advocate the importance of their security of tenure. Thus, no regulatory framework for the independence of central bank was proposed. In the classical version of the separation of politics from economics, the dangers of autocratic governments to financial reforms was neglected, and its political and legal reforms omitted. Legal checks and balances against rent-seeking and abusive regulatory behaviours were ignored.

The theoretical failures indicate the partial and incomplete nature of the McKinnon-Shaw theory of financial liberalisation. While, the key economic issues were addressed, the legal and political indices were overlooked. Indeed, the legal, political and economic remedies to the major economic difficulties confronting many financially repressive countries - fiscal imbalance and inflationary dilemma, were neglected. It is submitted that financial reform to be effective must be comprehensive, multidimensional and holistic. The Nigerian experience has underscored the essentiality of incorporating legal, political and institutional variables into any model of financial reform<sup>1298</sup>.

<sup>1298</sup>. See Lewis and Stein, *op. cit.*, p. 5. see also Collier, P., *op. cit.*, p.325.

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# APPENDIX 1

## Interest rate structure 1970-80

Percentages

Year (end- Dec.)	Minimum rediscount rate	Treasury bill rate	Time deposits			Loans and advances			Index of savings deposits 1970=100	Index of aggregate credit 1970=100
			3 - 6 months	6 - 12 months	over 12 months	First- class advances	Produce advances	Other advances		
1970	4.5	4.0	3.0	4.5	3.5	7.0	7.75	8.0	100.0	100.0
1971	4.5	4.0	3.0	3.5	4.0	7.0	9.0	10.0	123.5	142.8
1972	4.5	4.0	3.0	3.5	4.0	7.0	10.0	10.0	154.8	176.3
1973	4.5	4.0	3.5	3.5	4.0	7.0	10.0	10.0	173.0	214.4
1974	4.5	4.0	3.5	3.5	4.0	7.0	10.0	10.0	221.0	267.0
1975	3.5	2.5	3.0	3.0	4.0	6.0	9.0	9.0	401.9	437.6
1976	3.5	2.5	2.5	3.5	3.5	6.0	8.0	10.0	546.8	604.2
1977	4.0	3.0	3.0	3.0	2.0	6.0	6.0	6.0	717.1	875.2
1978	5.0	4.0	5.0	5.25	5.5	7.0	11.0	11.0	829.4	976.7
1979	6.0	5.0	5.5	6.0	6.5	7.5	9.0	11.0	989.1	1,032.1
1980	6.0	5.0	5.5	6.0	6.5	7.5	9.0	11.0	1,169.8	1,256.4

Sources : (1) CBN, Economic and Finance Review - various years  
 (2) CBN, Annual Report and Statement of Accounts - various years  
 (3) Okigbo (1981), p.71.

**APPENDIX 2**  
**Ownership of the Nigerian domestic public debt 1963 - 85**

Million naira				
Year	Central bank	Comm. banks	Non- bank public	Total
1963	36.4	3.4	87.6	127.4
1964	40.6	11.8	121.9	174.3
1965	63.1	14.1	139.1	216.3
1966	100.4	27.3	160.5	288.2
1967	155.8	33.4	176.2	365.4
1968	90.5	218.5	183.1	492.1
1969	185.4	314.6	274.0	774.0
1970	231.7	459.0	380.1	1,070.8
1971	342.6	328.0	447.7	1,118.3
1972	194.3	387.4	419.0	1,000.7
1973	222.4	387.8	451.0	1,061.2
1974	22.2	766.0	478.4	1,266.6
1975	313.7	801.3	563.9	1,678.9
1976	459.7	1,196.8	973.5	2,630.0
1977	1,683.1	1,685.2	1,267.7	4,636.0
1978	3,197.3	1,096.5	1,689.3	5,983.1
1979	2,549.2	2,416.4	2,316.7	7,282.3
1980	2,859.3	2,978.9	2,080.3	7,918.5
1981	6,046.6	2,155.2	3,243.7	11,445.5
1982	8,022.5	3,168.5	3,656.5	14,847.5
1983	11,347.4	5,459.7	5,417.2	22,224.3
1984	10,701.4	8,998.2	5,975.4	25,675.0
1985	11,521.9	10,669.1	5,761.0	27,952.0

Sources : CBN, Annual Report and Statement of Accounts - various years.



**APPENDIX 3**

**Ownership of the Nigerian domestic public debt 1963 - 85**

**Percentages of total debt**

Year	Central bank	Comm. banks	Non- bank public
1963	28.6	2.7	68.8
1964	23.3	6.8	69.9
1965	29.2	6.5	64.3
1966	34.8	9.5	55.7
1967	42.6	9.1	48.2
1968	18.4	44.4	37.2
1969	24.0	40.6	35.4
1970	21.6	42.9	35.5
1971	30.6	29.3	40.0
1972	19.4	38.7	41.9
1973	21.0	36.5	42.5
1974	1.8	60.5	37.8
1975	18.7	47.7	33.6
1976	17.5	45.5	37.0
1977	36.3	36.4	27.3
1978	53.4	18.3	28.2
1979	35.0	33.2	31.8
1980	38.0	32.5	29.5
1981	52.8	18.8	28.3
1982	54.0	21.3	24.6
1983	51.1	24.5	24.3
1984	42.0	35.0	23.0
1985	41.2	38.2	20.6

Source: CBN, Annual Report and Statement of Account - Various years.

## **APPENDIX 4**

### **Requirements for Minimum Paid-up Capital in Nigeria ( N )**

Year	Commercial Banks		Merchant Banks
	Indigenous	Expatriate	
1952	25,000	200,000	-
1958	500,000	400,000	-
1969	600,000	1,500,000	-
1979	600,000	1,500,000	2,000,000
1988	10,000,000		6,000,000
1989	20,000,000		12,000,000
1991	50,000,000		40,000,000
1997	500,000,000		500,000,000

Source: CBN, Annual Report and Statement of Accounts - various years.



**APPENDIX 5**

**Deposit, Total Assets and Number of banks in Nigeria 1960 -1995**

Year	Number of Banks	Number of Bank Branches	Total Deposit (N' Million)	Total Assets (N'Million)
1960	13	193	137.0	235.8
1965	18	225	298.3	439.8
1970	15	277	630.4	1,159.8
1975	23	442	2,902.5	4,494.0
1980	26	752	10,295.1	17,348.0
1985	40	1,323	19,445.7	36,999.0
1986	42	1,494	20,478.6	68,024.1
1987	50	1,545	26,469.7	62,108.4
1988	66	1,711	33,882.7	76,429.8
1989	81	1,904	30,990.6	87,641.4
1990	107	2,001	43,869.0	111,551.3
1991	119	2,171	59,476.7	155,456.9
1992	120	2,364	87,738.2	232,278.5
1993			143,853.0	341,743.5
1994	116	2,541	166,130.5	393,979.1
1995	115	2,500	208,850.3	555,472.7

Sources: CBN, Annual Report and Statement of Accounts - various years.

APPENDIX 6

OWNERSHIP STRUCTURE OF BANKS WITH FEDERAL GOVERNMENT PARTICIPATION

		OWNERSHIP STRUCTURE (%)				
S/No	Commercial Banks	Federal Govt.	State Govts.	Private Nigerian	Foreigners	Total
1.	Afribank Plc	50	-	10	40a	100
2.	Allied Bank of Nig. Plc	51	-	9	40	100
3.	First Bank of Nig. Plc	44.8	-	17.2	38	100
4.	FSB Inter. Bank Plc	100.0	-	-	-	100
5.	Nigeria-Arab Bank Ltd.,	60.0	-	-	40	100
6.	Savannah Bank of Nigeria Plc.	51.3	-	18.5	30.2	100
7.	Union Bank of Nig. Plc.	51.7	-	48.3	-	100
8.	United Bank for Africa Plc.	45.8	-	14.2	40	100
Merchant Banks						
9.	Continental Merchant	51	-	9	40c	100
10.	Icon ( Merchant Bankers )	90b	-	10	-	100
11.	Int. Merchant Bank	60	-	-	40c	100
12.	Merchant Bank of Africa	4.45	-	55.5	40	100
13.	NAL Merchant Bank	47.3d	10.3e	16.4	26	100
14.	Nigeria Merchant Bank Plc.	60	-	40f	-	100

a= Foreign Technical Partner in voluntary withdrawals, shares warehoused pending sale to suitable partners.

b= Nigerian Industrial Development Bank owns 60% while NICON owns 30%

c= Warehoused pending sale

d= This includes NICON's shareholding

e= Proportion owned by New Nigerian Development Company Limited

f= UBA own 40%

Sources: CBN, Annual Report and Statement of Accounts, 1992 & 1993.



**APPENDIX 7**

**SUMMARY OF FINANCIAL SAVINGS AT BANKS AND NON-BANK  
FINANCIAL INSTITUTIONS.**

**( N'Million )**

	1985	1987	1991	1992	1994	1995
Sav. & Time Dep.						
i) At Commercial Banks	9994.9	15,088.7	30,359.75	42,438.8	76,128.0	93,327.8
ii) At Merchant Banks	1145.1	2,822.8	,007.0	8,342.5	23,731.3	22,476.7
National Provident Fund	524.7	614.0	650.0	719.8	757.8	731.4
Mortgage Institutions	113.9	133.7	433.7	729.4	1,135.8	894.9
Life Insurance Funds	N/A	N/A	1,242.2	1,411.3	1,392.7	1,928.5
Other Dep. Institutions	8.2	N/A	45.6	341.8	2,988.9	1,666.9
TOTAL	11786.8	18,659.2	37,738.2	53,983.6	106,134.5	121,026.2

**BANKING SYSTEM CREDIT TO THE ECONOMY  
MONTHLY AVERAGES ( N' Million )**

Year	Total	To Private Sector	To Government Sector
1985	31,335.5	13,070	18,265.0
1986	33,920.0	15,247.5	18,672.5
1987	38,531.7	18,317.6	20,214.1
1988	52,771.4	27,326.4	25,445.0
1989	54,488.8	30,403.2	24,085.6
1990	50,179.9	33,547.7	16,632.2
1991	83,823.7	45,325.2	38,498.5
1992	141,735.7	61,020.3	80,715.4
1993	271,350.9	92,501.6	178,849.3
1994	312,268.0	113,519.2	198,748.8
1995	383,821.4	154,579.1	229,242.3

Sources: CBN, Annual Report and Statement of Accounts- various years.

APPENDIX 8
RETURNS OF COMMERCIAL BANKS ON FRAUDS AND FORGERIES

Year	No Of Reported Fraud Cases In Banks	Amount Involved (N')	Actual/ Expected Loss (N')	Proportion Of Actual/Expected Loss To Amount Involved (%)
1989	62	98,223.6	15,341.0	15.6
1990	91	788,798.1	22,449.1	2.9
1991	79	360.19m	25.50m	2.9
1992	89	351.93m	64.8m	18.4
1994	152	2,655.71m	883.55m	33.26
1995	127	1,006.28m	226.38m	22.49

RETURNS OF MERCHANT BANKS ON FRAUDS AND FORGERIES

Year	No Of Reported Fraud Cases In Banks	Amount Involved (N')	Actual/ Expected Loss (N')	Proportion Of Actual/Expected Loss To Amount Involved (%)
1989	6	6,744,132.00	100,000	*
1990	10	15,398,784.08	33,392.23	0.2
1991	17	28.39m	1.18m	0.2
1992	19	59.82m	8.31m	13.9
1994	18	5.08m	2.75m	9.02
1995	14	743.68m	67.10m	54.13

m = Million
\* = Negligible.

Sources: NDIC, Annual Report and Statement of Accounts- various years.



**APPENDIX 9**

**Ownership of the Nigerian domestic public debt 1988 - 95**

**Million naira**

Year	Central Bank	Commercial Bank	Merchant Bank	Non-Bank Public	Total
1988	27,682.7	7,714.5	181.5	11,452.4	47,031.1
1989	38,391.3	3,670.6	98.2	14,891.0	57,051.1
1990	56,564.1	8,917.3	355.8	18,255.9	84,093.1
1991	89,412.6	6,847.0	679.4	19,261.2	116,200.2
1992	122,028.3	5,881.2	1,027.0	32,963.7	161,900.2
1993	189,773.4	29,346.8	9,451.1	32,522.3	261,093.6
1994	241,567.5	39,184.2	8,644.8	51,869.8	341,266.3
1995	340,471.0	18,007.6	2,105.3	49,014.1	409,598.0

Sources: CBN, Annual Report and Statement of Accounts,- various years.

APPENDIX 10

SECTORAL ALLOCATION OF CREDIT: BEFORE LIBERALISATION

COMMERCIAL BANK				
Sectoral Distribution Of Bank Credit				
		Percent		
		1976/77	1977/78	1978/79
A. Preferred sectors/sub-sectors				
(i) Production		48	48	50
Agriculture		6	6	6
Mining		2	2	2
Construction		10	10	10
Residential			(5)	(5)
Others			(5)	(5)
(ii) Services		10	10	10
Public utilities		2	2	2
Transportation & Communication		8	8	8
Total A		58	58	60
B. Less Preferred sectors/sub-sectors				
(iii) General Commerce		30	30	30
Exports		6	6	6
Imports		10	10	10
Domestic Trade		12	12	12
Bill discounted		2	2	2
(iv) Other		12	12	12
Credit & Financial Institution		3	3	3
Government		2	2	2
Personal & Professional		4	4	4
Miscellaneous		3	3	3
Total B		42	42	40
Total ( A&B )		100	100	100

MERCHANT BANK			
Sectoral Distribution Of Bank Credit			
		Percent	
	1976/77	1977/78	1978/79
A. Preferred sectors/sub-sectors			
(i) Production	60.0	60.0	64.0
Agriculture	6.0	6.0	4.0
Mining	2.0	2.0	2.0
Manufacturing	36.0	36.0	40.0
Construction	16.0	16.0	18.0



Residential		(5.0)	(5.0)
Others		(11.0)	(13.0)
(ii) Services	10.0	10.0	10.0
Transportation & Communication	8.0	8.0	8.0
Public utilities	2.0	2.0	2.0
Total A	70.0	70.0	70.0
B. Less Preferred sectors/sub-sectors			
(iii) General Commerce	23.0	23.0	23.0
Exports	5.0	5.0	5.0
Imports	11.0	11.0	11.0
Domestic Trade	2.0	2.0	2.0
Bill discounted			
(iv) Others	7.0	7.0	7.0
Credit & Financial Institution	3.0	3.0	3.0
Government	2.0	2.0	2.0
Miscellaneous	2.0	2.0	2.0
Total B	30.0	30.0	30.0
Total ( A&B )	100	100	100

## SECTORAL ALLOCATION OF CREDIT AFTER LIBERALISATION

Sectoral Allocation Of Bank Credit For 1987 - 1989  
( Per cent )

Sector	Commercial Banks	Merchant Banks
A. High Priority Sectors	50.0	50.0
(i) Agricultural Production	(15.0)	(10.0)
(ii ) Manufacturing Enterprises	(35.0)	(40.0)
B. Other Sectors	50.0	50.0
Total "A" + " B "	100.0	100.0

Note : Percentage shares of "A" (i) and (ii) should be regarded as minima.

Sectoral Allocation Of Bank Credit For 1992 - 1996  
( Per cent )

Sector	Comm. Banks 1992/93	Merchant Banks 1992/93	Comm. Banks 1994	Merchant Banks 1994	Comm. Banks 1995/96	Merchant Banks 1995/96
A. Priority Sectors	50	50	60	58	75	75
(a) Agricultural	5.0	10.0	18	13	18	13
(b) Manufacturing	35.0	40.0	42	45	42	45
(c) Exports	-	-	-	-	10	12
(d) Solid Minerals	-	-	-	-	5	5
B. Others Sectors	50	50	30	30	25	25
Total (A+B )	100	100	100	100	100	100

Note : The Percentage shares in A(a). (b). and (c )were prescribed as minima, while those in B were deemed maxima.

Sources: CBN, Monetary and Policy Guidelines,- various years.



## The Mogul Generals

First they were soldiers, then they made business their battle-field, reaping conquests all the way

After the graduation of students from the military

In today's Nigeria, it is possible for a child to do all his socialisation surrounded by uniforms, soldiers and the jackboot. He can attend a military school right from nursery age. He grows to love the life and even venerate it as the only type desirable, or even possible. That is the drawback of the military schools. They could create people who view everything non-military with disdain.

Reported by AYODELE ALE

Another retired general whose business interests in the nation's economic terrain can be referred to as octopoidal is Gen Inuwa Wushishi (rtd). Like Gen W. Danjuma, he is also former chief of Army Staff, who since quitting the military establishment in 1987 has gone the way of his military colleagues by opting for business.

Wushishi's business interests traverse many vital sectors of the economy. He is the chairman of Continental Reinsurance Company and Chairman of the gigantic

## MILITARY CONTROLLERS OF FINANCIAL INSTITUTIONS

Li Gen T.Y. Danjuma	Universal Trust Bank	Chairman	Air Cdre. Bernard Banfa	Liberty Assurance	Director
Li Gen T.Y. Danjuma	First Universal	Chairman	Air Vice Marshal A.D Bello	Globe Reinsurance	Director
Li Gen T.Y. Danjuma	Continental Reinsurance	Director	Colonel Odunsi Davies	Cashpoint Savings and Loans	Director
Capt Isiah Gowan	United Bank for Africa	Director	Comm. M.A. Davies	Apple Finance and Securities	Director
Capt. Isiah Gowan	Greenfield Mortgage	Director	Air Cdre. Kola Felope	Classic Home S & L Ltd	Director
Maj. Gen M. Shuwu	International Merch. Bank	Chairman	Brig. Haamron Eghagha	Dayne Finance & Investments	Director
Maj. Gen J. Oluleye	Gulf Bank	Chairman	Maj. Gen David Ejor	Public Finance Group	Director
Maj. Gen Abdullahi Shelleng	Solid Mortgage Ltd	Chairman	Maj. Gen. David Ejor	Alpha Insurance	Director
Maj. Gen. Abdulahi Shelleng	Fortune Mortgage	Chairman	Air Cdre. Kola Felope	Classic Home Savings & Loans	Director
Maj. Gen. Abdullahi Shelleng	Multi-Trust Bancshares	Chairman	Lt. Col. A.G. Eze	Target International Finance	Director
Maj. Gen. Abdullahi Shelleng	MBCOM Securities	Director	Vice-Admiral V.O. Kaja	Trendex Mortgage Bank	Director
Maj. Gen. G.O. Ejiga	MannyBank	Director	Col. M.B. Kelliel	Nigeria Reinsurance Co	Director
Maj. Gen. Ahmadu Rimi	Royal Merchant Bank	Director	Rear Adm. Ndubuisi Kanu	Dependable Finance	Director
Alh. Mohammed Gambo	Highland Bank	Chairman	(Late) Maj. Gen. Hassan Katsina	Prime Merchant Bank	Former Chairman
Maj. Gen. D. Jembewon	Ivory Merchant Bank	Vice - Chairman	Brig. George Kurubo	African Prudential	Chairman
Maj. Gen. D. Jembewon	Asset & Liability Ins. Corp	Chairman	Brig. Abba Kyari	Creative Finance	Director
Lt. Gen M.I. Wushishi	Churchgate Group	Chairman	Maj. Gen. Zeman Lekwol	Prudent Merchant Bank	Director
Lt. Gen. M. Wushishi	Chartered Bank	Chairman	Maj. Gen. Ekundayo Opeleye	Devcom Merchant Bank	Director
Lt. Gen. M. Wushishi	Continental Reinsurance	Chairman	Maj. Gen. Mammen Kontagora	Cardinal Mortgage Bank	Chairman
Lt. Gen. M.I. Wushishi	Inter-Continental Assurance	Chairman	Maj. Gen. Bagudu Mammen	Global Devi Mortgage plc	Chairman
Lt. Gen. M.I. Wushishi	Urban Shelter Bldg. Society	Chairman	Maj. Gen. M. Magoro	Inter-Continental Assurance	Chairman
Lt. Gen. M.I. Wushishi	Union Trust Bldg. Society	Chairman	AVM Moustkar Mohammed	Group Merchant Bank	Chairman
Lt. Gen. M.I. Wushishi	Prime Merchant Bank	Major Shareholder	AVM Moustkar Mohammed	Metropolitan General Insurance	Chairman
Lt. Gen. M.I. Wushishi	Centre-Point Merchant Bank	Major Shareholder	Maj. Gen. Abdullahi Mohammed	Trade Bank	Chairman
Lt. Gen. Gibson Jalo	Societe Generale Nigeria	Chairman	Maj. Gen. C.B. Ndiomu	BridgeStone Finance	Board Member
Lt. Gen. Gibson Jalo	Worldgate Bldg. Society	Chairman	Lt. Col. David Nehikhare	Great Merchant Bank	Director
Lt. Gen. G. Jalo	Silvertrust Insurance Brokers	Chairman	Lt. Col. Paul Ogbobor	Great Merchant Bank	Chairman
Lt. Gen. Gibson Jalo	Imperial Finance and Securities	Director	Brig. O. Odunsiya	Devserv Finance House	Director
Lt. Gen. Gibson Jalo	First Interstate Merchant Bank	Ex-Director	Col. Ogunsanwo	Crossland Savings & Loans	Director
Col. Sani Bello	Alpha Merchant Bank	Ex-Director	Lt. Col. Bola Ogunsanwo	Starlife Savings and Loans	Director
Col. Sani Bello	Broad Bank	Chairman	Police Comm. M.A. Oluokun	Peak Merchant Bank	Chairman
Col. Sani Bello	Continental Merchant Bank	Chairman	AVM Anthony Okpere	Corporate Alliance and Gen. Ins	Chairman
Col. Sani Bello	Globe Reinsurance	Chairman	AVM Okepere	Fenceworks Nominees	Director
Col. Sani Bello	Law Union and Rock	Chairman	Maj. Gen. Olufermi Oluoye	Zincope Fin and Securities	Chairman
Col. Sani Bello	Inland Bank	Director	Air Cdre. SE. Omeruah	Nigeria Merchant Bank	Director
Col. Sani Bello	Nicon Insurance	Director	Maj. Gen. S.K. Omolokun	Reona Securities and Finance	Director
Col. Sani Bello	Dominion Trust	Director	Lt. Col. Omowa	Space Ventures	Director
Chief Elin Inyang (fmr. IGP)	Grown Merchant Bank	Director	AVM G.S.A. Osho	Benchmark Investment	Director
Air Vice Marshal U. Muazu	Broad Bank	Director	AVM G.S.A. Osho	Norman Investment	Director
Maj. Gen. George Innih	Broad Bank	Director	AVM G.S.A. Osho	Duncan Mortgage Ltd	Director
Maj. Gen. George Innih	BridgeStone Finance	Director	Col. M.O. Oshisanya	Acclaim Home Savings & Loans	Director
Air Cdre. Dan Sileiman	North-South Bank	Chairman	Lt. Col. Tunde Oyedele	Nationwide Merchant Bank	Director
Maj. Gen. Musa Yar'adua	Habib Bank	Chairman	Lt. Col. Tunde Oyedele	Nationwide Securities	Director
Lt. Col. Hussain Abdulahi	Hilcrest Merchant Bank	Director	AVM Ishaya Shikari	Guardian Trust Savings and Loans	Director
Vice-Admiral H. Abdullahi	Acclaim Home Savings & Loans	Director	Maj. Gen. DKS Shosilva	African Alliance Insurance	Director
Commodore Sitadeen Akano	Liberty Assurance	Director	Commodore O.O. Sosan	Lagade Securities	Director
Commodore S. Akano	First Union Mortgage	Director	Maj. Gen. Paul Tarta C	Universal Trust Bank	Director
Brig. B.A. M. Adenkunle	Manhattan & Extraco. FI	Director	Maj. Gen. Paul Tarta	First Universal Ins. Brokers	Director
Colonel Adejoro	Teta Investments	Director	Commodore Ebitu Ukhwe	Societe Generale Nigeria	Director
Brig. G. Alabi-Isama	Golden Insurance	Director	AVM John Yisa-Doko	Intercity Bank plc	Director
Lt. Gen. Domkat Ball	Oriental Mortgage Bank	Chairman	Lt. Col. P.Z. Wyom	Prime Merchant Bank	Director
Lt. Gen. D. Ball	Perpetual Assurance	Director	Maj. Gen. AK Adisa (serving)	Afonja Community Bank	Chairman
Air Marshal Ibrahim Alfa	Highland Bank	Member	Maj. Gen. Adeyinka Adenbayo	Amicable Merchant Bank	Director
Maj. Gen. Seidu Balogun	Omicon Fin and Sec	Chairman			
Maj. A.B. Ayi-Bassery	Merchantile Bank	Director			
Brig David Bernigboye	Harmony Mortgage	Chairman			
Brig. David Bernigboye	InstaTrust Bldg Society	Director			

\*Not all the banks listed are distressed. List just indicative of pattern of military control.



• Joe Garbo



•David Mark



## FINANCIAL INDICES OF THE LIQUIDATED BANKS AS AT 31ST MARCH, 1997

FINANCIAL INDICES OF THE LIQUIDATED BANKS AS AT 31ST MARCH, 1997																	
S/NO. BANKS	CAPITAL (N MILLION)			ASSETS (N MILLION)						DEBITS (N MILLION)			LIQUIDITY RATIO (%)	CIN BALANCE (N MILLION)	OTHER CREDITORS (N MILLION)	BRANCH	STAFF
	ADJUSTED	CRWR (%)	RECAP	L & A		FIXED ASSETS	OTHERS	TOTAL	TOTAL	INSURED							
				NPL	TOTAL												
1. Allied	(1,787)	(171)	3,990	2,362	2,730	414	278	2,301	2,555	1,788	(22)	(536)	91	67	1,368		
2. Amicable	(154)	(39)	217	300	321	87	181	476	43	27	(880)	(409)	15	9	140		
3. Commerce	(3,351)	(169)	3,510	1,707	2,183	230	940	2,216	1,626	259	(78)	(1,355)	92	18	385		
4. Commercial Trust	(1,647)	(254)	1,699	512	569	56	235	756	227	41	(349)	(756)	203	13	279		
5. Cooperative & Commer	(2,358)	(140)	2,506	1,906	2,202	411	681	2,339	1,711	825	(37)	(609)	12	30	738		
6. Credite	(427)	(408)	423	409	409	68	41	115	148	35	(133)	(192)	52	5	55		
7. Highland	(133)	(174)	209	99	99	37	40	114	69	28	(147)	(116)	6	4	45		
8. Lobi	(386)	(48)	428	456	482	47	434	793	148	47	(127)	(272)	12	14	171		
9. Mercantile	(220)	(234)	2,290	1,465	1,499	89	66	1,027	741	518	(132)	(810)	516	86	431		
10. Pan African	(632)	(62)	714	1,188	1,199	66	76	1,093	540	309	(29)	(166)	16	25	32		
11. North-South	(807)	(185)	842	476	575	93	74	504	339	240	(189)	(650)	47	16	160		
12. Pinnacle Commercial	(693)	(52)	799	1,319	1,411	173	67	1,487	606	424	(98)	(733)	88	6	196		
13. Progress	(1,715)	(186)	1,789	1,594	1,641	327	113	1,187	967	678	(92)	(1,051)	104	42	467		
14. Abacus Merchant	(870)	(147)	917	254	399	23	422	569	205	14	(90)	(222)	921	1	42		

APPENDIX 12

Sources: Newswatch, Nigeria's Weekly Magazine. Feb. 2 1998



APPENDIX 12

15. ABC Merchant	(308)	(79)	339	309	676	52	105	663	194	30	24	(81)	11	3	41
16. Century Merchant	(802)	(302)	1,281	699	704	46	13	285	664	14	(25)	(161)	11	3	50
17. Continental Merchant	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
18. Crown Merchant	(154)	(197)	181	30	39	25	39	84	120	11	21	0	32	4	105
19. Great Merchant	(319)	(475)	325	354	354	19	13	217	122	5	(11)	(21)	42	2	48
20. Group Merchant	(463)	(106)	499	486	487	31	205	458	243	5	(15)	(42)	163	2	30
21. ICON Ltd (Merchant Bankers)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
22. Merchant Bank of Africa	(457)	(55)	573	1,732	1,808	215	313	1,387	480	23	(92)	(542)	649	5	87
23. Nig. Merchant Bank	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
24. Prime Merchant Bank	(386)	(3,006)	386	762	770	16	8	17	102	6	(8)	(13)	131	2	25
25. Royal Merchant Bank	58	13	0	294	405	35	53	88	175	13	36	0	11	4	63
26. Victory Merchant Bank	(326)	(795)	358	264	264	19	16	134	64	3	(173)	(122)	91	3	41
Total	(18,453)	(7,297)	24,275	18,986	21,226	2,579	4,281	18,310	12,089	5,343	(2,646)	(8,859)	3,316	364	4,999

\* Figures for Continental Merchant Bank, ICON Limited Merchant Bankers) and Nigerian Merchant Bank were not available.